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IN THE

Supreme Court of the United States

October Term, 1945.

No. 908.

MARIO MERCADO RIERA, *et al.*,
Petitioners,

v.

ADRIAN and MARÍA-LUISA MERCADO RIERA DE BELAVAL,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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THE REPORTER COMPANY, Inc., Walton, N. Y.
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Supreme Court of the United States

OCTOBER TERM, 1945.

No. 908.

MARIO MERCADO RIERA, Executor, Petitioner, v. MARÍA-LUISA MERCADO RIERA DE BELAVAL and ADRIÁN MERCADO RIERA, Respondents.	No. 1517. Supreme Court of Puerto Rico No. 3960. C.C.A., 1st.
PEDRO M. PORRATA, Commissioner, Petitioner, v. MARÍA-LUISA MERCADO RIERA DE BELAVAL and ADRIÁN MERCADO RIERA, Respondents.	No. 1517. Supreme Court of Puerto Rico No. 3960. C.C.A., 1st.
MARIO MERCADO RIERA, Executor, Petitioner, v. MARÍA-LUISA MERCADO RIERA DE BELAVAL and ADRIÁN MERCADO RIERA, Respondents.	No. 1516. Supreme Court of Puerto Rico No. 3960. C.C.A., 1st.
MARIO MERCADO RIERA, Executor, Petitioner, v. MARÍA-LUISA MERCADO RIERA DE BELAVAL and ADRIÁN MERCADO RIERA, Respondents.	No. 1518. Supreme Court of Puerto Rico No. 3960. C.C.A., 1st.

BRIEF FOR RESPONDENTS.

Introductory.

The several four above-entitled cases, consolidated only for the purposes of hearing in the Court of Appeals, present questions of purely local law of Spanish origin, correctly decided without dissent, by the Supreme Court of Puerto Rico (R. 97-121) and the Court of Appeals (R. 912-933). The insular Supreme Court emphasizes that: "The fundamental question which is the gist of the whole controversy is whether or not the executorship in the present case has terminated by virtue of the expiration of the period which the testator and the law allowed the executor, or whether the heirs, by their acts in accordance with the compromise contract, could extend said period" (R. 110 top).

The Court of Appeals did not find any erroneous ruling below; but, on the other hand, it stated that "it would seem to be patently correct" (R. 930 mid.; 152 F. 2d 96; col. 2 top).

Opinions Below.

The local Supreme Court's opinion, delivered on July 14, 1943, is reported in *Mercado v. Corte,* 62 D. P. R. 368-391, Spanish edition. The English edition has not yet appeared. An English translation of the opinion of the Puerto Rican Supreme Court is part of the printed record (R. 97-121). Petitioners attempted to appeal to the Court of Appeals (R. 24, 123, 126, 182), from three separate and different judgments (R. 24, 121, 181). Their affirmance by the Circuit Court of Appeals for the First Circuit is reported in *Mercado Riera v. Mercado Riera* (Nov. 23, 1945), 152 F. 2d 86.

Jurisdiction.

Respondents contend that according to their motion for dismissal (Appendix A) of the petition for certiorari, there is no ground on which the reviewing power of the United States Supreme Court may be invoked.

Respondents append hereto their motion to dismiss the petition herein, so that the facts essential to an adequate appreciation of the situation in this purely private litigation, may be brought to the Court's attention without interruption.

Statement of the Three Cases Involved.

A proper understanding of the questions presented, requires the facts and the various independent proceedings involved, to be stated with some detail. This is specially so, in view of petitioners' inaccurate and confusing statement of the case.

The essential facts common to the several cases are as follows:

Mario Mercado Montalvo died on August 22, 1937 (R. 99, 349, 502). He left a holographic will, which was probated and notarially recorded (R. 99, 521-523), in which he designated as his sole and universal heirs his four children, all of full legal age, named María-Luisa, Margarita, Adrián and Mario Mercado Riera, the issue of his marriage to his predeceased wife, Eufemia Riera Dubocq (R. 40, 99, 513). No litigation has arisen concerning the validity of decedent's will (R. 40), which was fully accepted by the heirs (R. 102, 527, 540 bot., 542 mid., 543 bot.).

In his said will, the testator appointed Mario Mercado Riera as his testamentary executor, "*extending to him the*

statutory term of one year for whatever time might be necessary to perform his office." Of course, the insular Supreme Court had before it, considered and passed upon the *Spanish text* of the will which in this respect reads: "extendiéndole el término de un año que dice la ley *a todo el término que fuese necesario para cumplir su cometido"* (see *Mercado v. Corte,* 62 D. P. R. 381 mid., Spanish edition). Whether the Spanish phrase *"a to do el término"* be translated into English as *"for whatever," "for all"* or *"for whatsoever* time might be necessary" is immaterial, since at all events the extension is for an *indefinite* length of time. It was so construed by the Supreme Court of Puerto Rico in view of the peculiarly local provisions of the Civil Code (R. 110-112) of Spanish origin.[1]

The said extension of the executorship, not being expressly determined by the testator, it became fixed *ex lege* for only another year. Mario Mercado Riera, now ex-executor, now petitioner, failed to seek and in no way was he granted by any Court or by the heirs and legatees any further extension of his testamentary executorship (R. 112, 113 mid.).

He qualified as executor on September 1, 1937 (R. 196-197). Hence, the statutory term of one year (*P. R. Civ. Code* [1930], Sec. 826), terminated upon September 1, 1938; and the one year extension fixed by the Code in this case (*ib.* Sec. 827), expired on September 1, 1939 (Opinion of local Supreme Court, R. 112 mid.). On that date, the testamentary executorship of Mario Mercado Riera

[1] *P. R. Civil Code (1930),* Section 827: "Should the testator desire to extend the legal term, he must expressly fix the time of the extension. Should he not have fixed it, it shall be understood that the term is extended for one year. * * *" See Opinion of P. R. Supreme Court (R. 111-113), citing: Secs. 826, 827, Civ. Code, 1930 ed.; Decision of the Supreme Court of Spain of November 24, 1906, *105 Jurisprudencia Civil,* 812, 819; *Sánchez Román, Derecho Civil,* Vol. II, p. 1450; *6 Manresa, Comentarios al Código Civil,* p. 736; *4 Maura, Dictámenes (Legal Opinions),* pp. 308, 309, 351.

came to an end by operation of law (*ib.*, Sec. 832). Thenceforth, the further execution of any unfulfilled provision of the will devolved upon the heirs (*ib.*, Secs. 832, 833; R. 112 top, 114).

No special powers were conferred by testator's will on the testamentary executor (Opinion of insular Supreme Court, R. 99, 798). In such event, the executor can only perform the very limited functions specified in Section 824 of the insular Civil Code (1930, ed.). The executor is then considered, under the local law of Puerto Rico, *as a mere temporary, extrajudicial custodian of the estate* (*P. R. Civil Code, ed. 1930, §824, No. 4)* in behalf and with the intervention of the heirs, without any right to sell, collect claims, or to pay for liabilities, cancel mortgages, etc. (R. 3, 51, 117-119).[2]

Mario Mercado Riera accepted his designation as executor and through a separate proceeding provided for by local laws, qualified as such by obtaining judgment or decree for letters testamentary upon September 1, 1937 (R. 99 bot., 117, 120, 191, 196). *In Puerto Rico, a testamentary executorship does not mean that "the property of the estate is under judicial administration," i. e., under control of court or in custodia legis.*[3]

The testator, in his will, also designated Pedro M. Porrata as commissioner for partition (R. 513 bot.). In another separate proceeding, Porrata accepted and obtained judgment or decree (September 8, 1937) *in proof*

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[2] See: *6 Manresa, Código Civil* (3rd ed.), pp. 749-750, 751; *Clemente de Diego, Comentarios al Código Civil*, Vol. 3, p. 259; *Heirs of Pellicia v. Dist. Court*, 36 P. R. R. 588, 590; *Aponte & Sobrino v. Heirs of Pérez*, 48 P. R. R. 437, 441-442; *Pérez v. Pérez*, 41 P. R. R. 844, 845; *Crehore v. The Registrar of Property*, 22 P. R. R. 30, 33; *Cibes v. Santos*, 22 P. R. R. 208; *Ex p. Suau*, 27 P. R. R. 890.

[3] Supreme Court's opinion, R. 117-120, following *Aponte & Sobrino v. Heirs of Pérez*, 48 P. R. R. 437, 441, 442; *Pérez v. Pérez & Co.*, 41 P. R. R. 844, 845.

of his credentials or authority in the premises (R. 562-568). Invoking as applicable to a commissioner for partition *the provisions of the Puerto Rico Civil Code granting executors a period of one year from date of acceptance for discharging his trust,*[4] *Porrata sought* and obtained an extension to complete performance of his duties *up to September 6, 1939* (R. 100, 568 bot.-571). *Since then, Porrata has not sought nor has he ever been granted any additional term or extension* (R. 100, 115).

The ex-executor, now petitioner, failed to prepare an inventory of the hereditary assets and liabilities within certain extensions granted him therefor (R. 99, 100 mid.). In consequence, co-heir Adrián Mercado Riera, on January 24, 1938, instituted a special, summary proceeding in the Ponce District Court, numbered 1213, whereby after accepting his interest in testator's inheritance upon benefit of inventory, he prayed that the Court order the executor, Mario Mercado Riera, to appear in court with a complete statement of the assets and liabilities of the estate, and with all other necessary data for the formation of the required inventory (R. 100, 774, 780). Thereupon, Pedro M. Porrata, as commissioner for partition, voluntarily intervened in said proceeding seeking to set aside the above stated order of January 24, 1938, requiring the then executor to furnish the necessary data for the preparation of the judicial inventory, on the alleged ground that such duty devolved upon him (Porrata) (R. 788-792, 797-800). Porrata's contention was denied by the Ponce District Court on March 2, 1938 (R. 100, 811, 812, 819). He then

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[4] Porrata later attempted to change position (R. 85 top), but the local Supreme Court held that the terms for the discharge of executorships are applicable by analogy to commissioners for partition (R. 115, foll'g *96 Jurisprudencia Civil*, 599, 601, 602). See also: Decisions of the Supreme Court of Spain, February 24, 1927, February 22, 1929 (*173 Jurisprudencia Civil*, 699, and *187 Jurisprudencia Civil*, 807); Judgment of February 5, 1908; Judgment of January 23, 1935; Decision of the Registries, of November 13, 1903; *Sánchez Román, Derecho Civil*, Vol. 2 p. 1453.

brought a certiorari proceeding in the Supreme Court of Puerto Rico which led to the decision in *Porrata v. District Court* (April 29, 1938), reported in 53 P. R. R. 140-148, whereby the writ of review issued was quashed, the order of the District Court of January 24, 1938, requiring the then executor to bring the necessary data for the making of an inventory was upheld, and the parties interested in the estate of Mario Mercado Montalvo were urged to "cooperate with the lower court in framing a judicial inventory with all due expedition so that this estate be taken one step further along its road to division and partition" (R. 100, 854-863). It was not until September 12, 1938, that an inventory in said proceeding ♯1213 was submitted to the Ponce District Court by the then executor Mario Mercado Riera, in obedience to its affirmed decision of January 24, 1938 (R. 100, 881, 893). That was feasible, in part, due to the fact that on September 9, 1938, testator's heirs entered into a *compromise agreement* which included such inventory (R. 100, 527-548). Upon the presentation in the Ponce District Court by petitioner Mario Mercado Riera of the aforesaid inventory—that being the main objective of proceeding ♯1213—said case was thereupon *terminated* by order of September 12, 1938 (R. 891, 892).[5]

COMPROMISE AGREEMENT:

As above stated, decedent's four heirs or successors, with the intervention and acquiescence of the then (1938) executor and commissioner for partition, petitioner here, insofar as it might affect them as such, entered into a *compromise agreement* on September 9, 1938 (R. 100, 105, 527-548), whereby short periods were fixed with the ob-

[5] The insular Supreme Court and the Court of Appeals, in view of applicable local law and decisions, correctly held that neither in proceeding ♯1213, nor in any other, was there any judicial administrator appointed nor did Mario Mercado Riera ever become such (R. 104 bot, 117-119, 120 mid., 930 mid.; 152 F. 2d 96, col. 2 top).

vious purpose of promptly terminating the executorship. The first two clauses of such contract are not directly involved here, since one of them refers to the dissolution of a co-tenancy among the four heirs themselves regarding their maternal inheritance, and the other concerns the settlement of certain differences in connection with the firm Mario Mercado e Hijos, whereof the four heirs are also members (R. 100 bot., 527, 530, 533 bot.).

The *third clause* of the compromise agreement (which both appellate courts below found important enough "to warrant description in some detail" [R. 917-919, 152 F. 2d 89-90; R. 101-106, *Mercado v. Corte,* 62 D. P. R. 373-376, Spanish ed.]) consists of 18 paragraphs, respectively designated from (a) to (r), which deal with the estate of Mario Mercado Montalvo (R. 101-106, 539-547). The various covenants or paragraphs may be summarized thus:

> *In paragraph (a),* it was agreed that the hereditary properties, with their appraisal and liabilities, are those appearing on the inventory accepted by the heirs, as well as any properties, credits, rights and actions that might subsequently exist, appear or be discovered, and that the inventory should be filed in the Ponce District Court for the purposes of proceedings ♯782 and ♯1213.
>
> *In paragraph (b),* the heirs assigned to the then executor from said credit, a sum sufficient for the payment of the inheritance tax, overdue debts, testamentary charges and/or cash legacies, as shown by the inventory.
>
> *In paragraph (c),* it was stipulated that the legacies would be paid in full.
>
> *In paragraph (d),* the heirs and the partnership Mario Mercado e Hijos compromised certain differences regarding ownership of some bank deposits, and the sum of $256,000 was included among the estate's inventoried assets.

In paragraph (e), there was acknowledged in full a certain mortgage credit amounting to $78,697.23 in favor of heir María-Luisa Mercado Riera.

By paragraph (f), the heirs expressly *distributed* among themselves the other assets of the estate as follows:

"The remaining properties of the estate of Don Mario Mercado Montalvo, as appears from the aforesaid inventory, and those that might turn up afterwards as belonging to the ancestor, shall be understood as being, *and are hereby distributed* (adjudicated), share and share alike, among the four heirs, Don Mario, Doña Margarita, Don Adrián and Doña María Luisa Mercado Riera, the heirs always to endeavor to avoid the continuation of the common ownership."

(The 10% interest held by the testator in the social capital of the partnership Mario Mercado e Hijos had also been distributed by *clause 2, subdiv. "1"* of the contract [R. 538 bot.] in question, in the proportion of 2.50% to each of the four heirs.)

In paragraph (g), it was stipulated that the testamentary executor should render to the other heirs a *final account*[6] of the fruits, rents and products, or any other accretions of the hereditary estate, *within the agreed term of 15 days following the execution of the compromise contract* (September 9, 1938); and it was further agreed that if such final accounts should be objected to by any of the co-heirs respecting any of its items, the controversies or differences shall be submitted to the proper Court unless an amicable accord be reached within five (5) days after demand therefor by any of the parties.

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[6] In an independent proceeding for settling this final account to March 4, 1940 (R. 235-240, 242), in view of appellees' objections thereto (R. 225-233, 242-244), the Ponce District Court (Judge Sepúlveda) adjudged that the ex-executor, petitioner here, by reason of improper disbursements of estate funds, repay or make restitution to heirs of monies in excess of $125,000 (R. 397-426; 427-430).

In paragraph (h), it was stated that the testamentary executor would be entitled to whatever compensation the law may provide, to legal and necessary expenses incurred as a result of the executorship, which *shall be included in the final accounts* of the executorship for the purpose of being submitted to the approval of the parties in the manner agreed upon, that is, *within 15 days* from the execution of the compromise contract.

In paragraph (i), Mario Mercado Riera, as the then testamentary executor and in connection with the estate left by Mario Mercado Montalvo, agreed again with the other heirs upon a *short term of 10 days from the date of the compromise contract,* to serve notice of the death (local estate tax return) of testator upon the Treasurer of Puerto Rico; and on liquidation of same, to pay the inheritance tax, charging the share paid for each party to his respective interest in the estate.

In paragraph (j), it was stipulated that all the legacies with interest would be paid by the then executor as provided for in the will, with leave to advance payment thereof.

In paragraph (k), the heirs undertook to secure the claims of contingent creditors by furnishing personal security; and those who failed to do so promised then to mortgage the valuable estate "Hacienda Feliz," *within three months from the execution of the contract* to the extent of their interest therein.

In paragraph (l), Pedro M. *Porrata, as testamentary commissioner, in view of the agreement between the heirs already recited* and *which includes that relating to the distribution of the estate into four undivided shares, accepted the heirs' compromise contract* (R. 544 mid.), *as follows:*

"Don Pedro M. *Porrata,* as testamentary auditor partitioner of the estate of Don Mario Mercado Montalvo, being present at the execution of this document, and *taking into consideration the fact*

that heirs, Don Mario, Doña Margarita, Doña María Luisa and Don Adrián Mercado Riera *are in agreement or conformity with the form and terms of the partition or distribution of the estate of the testator Don Mario Mercado Montalvo and with everything in connection therewith, as set forth in the present contract of compromise, accepts and joins in said contract agreeing to all of its covenants, terms and conditions insofar as they affect him as auditor partitioner of aforesaid estate,* undertaking to abide by its provisions and to comply with the letter of the present contract without making any modification, addition or alteration in the (draft of) partition[7] of the estate to be referred to in the following paragraph."

In paragraph (m), Pedro M. Porrata undertook to prepare said draft of partition *within ten days from the payment of the inheritance tax,* exclusively in accordance with the terms of the compromise contract, it being stated again that *it could not be "altered except with respect to the description of the properties* or goods of the estate, *nor modified, added to or amplified in any manner* whatsoever" (R. 545); and it was therein agreed that for the study, preparation and execution of the said draft of partition *in the manner agreed upon in the compromise contract,* the commissioner should be paid as compensation, chargeable against the estate, $20,000.[8]

In paragraph (n), it was agreed to include among the charges against the estate, the sum of $12,500, for the payment of the agreed fees,[9] expenses and costs of all kinds whatsoever, of attorneys Felix Ochoteco and Fernando Zapater, for their profes-

[7] Spanish text reads, "cuaderno particional," which means "draft of partition," as appears in opinion, local Supreme Court (R. 103).

[8] Porrata was paid this sum by the ex-executor (R. 931; 152 F. 2d 96, col. 2 bot.; see SUB-APPENDIX A-I, p. 111).

[9] Among the various disbursements by the ex-executor, which were charged to the heirs or entered for accounting purposes, there is an item for $12,500 for "executor's lawyers' fees" (R. 240, mid., 104, 545 bot.).

sional services rendered to this date to the testator, the executor of the estate of Mario Mercado Montalvo, and for any other reason in connection with the inheritance of Don Mario Mercado Montalvo, including fees for the preparation and execution of the deeds and four certified copies thereof for the heirs as set forth in clauses first, letter (D), paragraph 3, second, paragraphs 1st and third, letter (m), the cost of the Internal Revenue stamps cancelled on the respective copies delivered to the heirs to be borne by them.

In paragraph (o), it was also agreed to pay, as a charge against the estate, certain fees to attorneys for Adrián Mercado covering only professional services in above stated action $1213.

In paragraph (p), the heirs mutually authorized each other to incorporate the private compromise agreement in a public notarial deed, which was done on February 25, 1941 (R. 524-527).

By paragraph (q), as regards all deeds to be executed in the short and peremptory terms fixed in the compromise agreement, it is again stipulated that "its terms, clauses, conditions and covenants shall not be and cannot be modified, added to or changed in any manner whatsoever, nor may they be enlarged in any way whatsoever, except with respect to the description of the immovables described in each deed hereafter to be executed, and aforesaid covenant-agreements, clauses, terms and conditions shall always, in all subsequent deeds, be literally transcribed just as they have been here set forth."

(See: R. 100-104, 527, 539-547).

Respecting preceding compromise agreement, the insular Supreme Court, among other conclusions, determined that it could not be construed as an extension of the executorship (R. 112-113, 116), *in view of the short and precise terms or periods therein fixed by the heirs;* that at the date of such contract (1938) the then executor still

had about one year within which to fulfill his duties (R. 113, 116), which he did not (R. 112-113, 116), but instead allowed the executorship to expire *ipso jure* on September 1, 1939 (R. 112, 113); that no judicial administration had ever been sought or decreed to place the estate in *custodia legis* (R. 104-105, 116 bot.-119, 120); *that the* remaining *assets with the assent of all concerned, were distributed among the four heirs* (R. 116 top, 119 mid.); *and that, upon expiration of the executorship, attention to any unfulfilled provision of testator's will, devolved upon the heirs according to Section 833 of the local Civil Code* (R. 114, 115 mid., 120 mid.), etc.

Certiorari #1517 (Insular Supreme Court):

Substantially averring the facts and situation set out in the foregoing statement, respondents Adrián and María-Luisa Mercado Riera filed in the Ponce District Court a petition, dated October 27, 1941, for the surrender or delivery to the heirs and co-owners of the properties of the estate and the rendition (from March 4, 1940) of final supplemental accounts by the ex-executor Mario Mercado Riera (R. 49, 98 mid., 348-358). *This proceeding arose out of Sections 832 and 833 of the local Civil Code* (ed. 1930). They substantially provide that, upon expiration of the term fixed for the executorship, the latter terminates *ipso jure* even though the commission may not have concluded; and if the executor then refuses to deliver the estate or to render accounts, he may be judicially compelled to do so (R. 114).

Coheir Margarita Mercado Riera, upon accepting service of said petition for the return to the heirs of the hereditary assets, *expressly stated that she had no objection to such petition* (R. 49 mid., 105 mid., 361 bot., 362). Respondents Adrián and María-Luisa Mercado Riera, who were petitioners in the local Supreme Court,

and their sister Margarita Mercado Riera, represent three-fourths of the estate involved (R. 49, 105 mid.).

Petitioner Mario Mercado Riera, the ex-executor, answered on the merits to the petition for the surrender of the estate, stating, among other things, that "*with respect to the delivery of the properties* of the estate by the executor herein appearing, to the coheirs, including himself as one of said coheirs, *he has always been willing and ready to do it,*" but on condition: (1) that there should first be executed a draft of partition by Pedro M. Porrata as testamentary partitioner;[10] and (2) that security be furnished for the payment of certain legacies[11] and other alleged liabilities, etc. (R. 49 mid., 363).

As will be observed, no federal question was either raised or involved in the Ponce District Court (R. 105 mid., 363). Although Pedro M. Porrata, ex-commissioner for partition, knew (R. 365 bot.-366) of this separate proceeding for the return of the hereditary properties to the heirs, *he did not even seek to intervene therein under Section 72, Puerto Rico Code of Civil Procedure,* ed. 1933, if he felt he had any interest in the matter,[12] obviously

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[10] The Supreme Court found that neither the executor nor the commissioner for partition complied, either within the terms fixed or subsequently, with the compromise contract (R. 115, 116, mid., 119 mid.). Respondents' objections to the so-called partitioner's report appear in the Record, pp. 396, 598-605. In Puerto Rico, *a voluntary distribution of the estate by and between the heirs* (R. 102, 116, 119 mid., 542 mid.), *especially if consented to by the then* (1938) *partitioner* (R. 103, 116 top) *and a fortiori, when the latter allowed his incumbency to expire* (R. 115), *renders unnecessary his further intervention* (Sec. 604, *Code of Civ. Proc.*, ed. 1933; *Ex p. Sotomayor*, 24 P. R. R. 172; *Irizarry v. Registrar*, 22 P. R. R. 88; *Galindo y Escosura, Legislación Hipotecaria*, Vol. 2, pp. 257-258; *Heirs of Pellicia v. Court*, 36 P. R. R. 588).

[11] Respondents and their sister, Margarita Mercado Riera, paid off their shares of all legacies with interest and other due liabilities (APPENDIX A, p. 113; See R. 240 mid., 104, 545 bot.).

[12] Porrata admitted in the insular Supreme Court that he did not have any of the properties of the estate in his possession *nor had he any objection whatsoever to have them administered by "the four coheirs,* as provided by the judgment of the local Supreme Court" (R. 141 mid.; SUB-APPENDIX A-II, p. 114; R. 931; 152 F. 2d 97).

because such proceeding was not directed against Porrata,[13] but solely against the withholding ex-executor (R. 98 mid., 358 bot.). Porrata's activities in those cases (his brief, 43 bot.), amounted to no more than a petition *starting a new proceeding* in the Ponce District Court—still pending there on motion to quash the attempted service therein—for the purported approval of a so-called commissioner's report (see *post*, pp. 35-39).

Upon November 17 and 21, 1941, the Ponce District Court heard the separate petition for the surrender of the estate to the heirs. Respondents, then plaintiffs, and the ex-executor Mario Mercado Riera, then opponent, introduced their evidence relating to said cause (R. 365 bot., 379 bot., 380). The evidence offered and admitted was mainly documentary (R. 187-189, Certiorari #1517).

Notwithstanding the Ponce District Court was reminded that the petition for the return of the estate had been finally submitted for decision since January 10, 1942, it was not until more than a year after (March 24, 1943) that the District Court of Ponce denied these respondents' petition (R. 475 bot., 476).

The Ponce District Court, through Judge Gadea Picó, though acknowledging that Mario Mercado Riera "has always been willing to deliver the estate to his coheirs so that, with respect to the delivery, there is no controversy" (R. 472 mid., 106 mid., 50), thought, though as stated, not necessarily basing his decision thereon (R. 106 bot., 472 bot.), that the several proceedings concerning decedent's estate constituted *a sort* of testamentary action or judicial administration proceeding; that the expiration of the year's executorship and its statutory

[13] Under local law, when proceeding is not directed against a person, he is not a necessary party (*Flores v. Llompart*, 50 P. R. R. 641, 645 mid.; *Rodriguez v. Arocho*, 62 D. P. R. 700 (Spanish edition); *Pellicia v. Court*, 36 P. R. R. 588.

extension for a like period did not *ipso jure* terminate the executorship; and that if Mario Mercado Riera was not a judicial administrator, he could then be considered as an agent or attorney in fact of the coheirs, etc. (R. 50, 106 mid.-107, 472 bot., 473 bot., 474).

Respondents Adrián and María-Luisa Mercado Riera, upon refusal of reconsideration by the Trial Court (R. 481, 487), petitioned the Supreme Court of Puerto Rico for a writ of certiorari to review the above decision of the Ponce District Court,[14] denying the return by the ex-executor of the estate to the co-owners and for supplemental final accounts (R. 40-58).

Serious procedural errors and harmful action in excess of its jurisdictional powers were therein ascribed to the Ponce District Court (R. 50-54), which may now be summarized thus:

> The Ponce District Court fell into grave error in excess of its jurisdiction or power and in serious and prejudicial procedural *error in decreeing the continuation of an executorship which had expired on September 1, 1939, when no extension therefor had been granted,* and in thereby refusing the unconditional delivery of the hereditary properties to its lawful owners, so they might continue any further compliance with testator's will.

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[14] Section 670, *et seq.*, Code of Civil Procedure, P. R., 1933, empowers the local Supreme Court to issue writs of certiorari where procedure of lower Courts *is not according to the course of law, and to complete the proceedings when Court below refuses to do so upon erroneous grounds.* The granting of such review is *discretionary,* even *though appeal may also* lie, whenever in its judgment remedy by certiorari is more speedy and adequate to protect the rights involved, where Trial Courts commit errors of procedure or act in excess of their powers or jurisdiction (*Sanchez v. Zequeira,* 23 P. R. R. 47; *Nunez v. Soto Nussa,* 14 P. R. R. 190, 192; *Mendez v. Nussa,* 13 P. R. R. 366; *Sporting Club v. Foote,* 31 P. R. R. 154, 163; *Pellicia v. Court,* 36 P. R. R. 588; *Comas v. Court,* 39 P. R. R. 689, 691; *Lopez v. Court,* 40 P. R. R. 478, 480; *Franceschi v. Court,* 45 P. R. R. 646; *Pol v. Court,* 48 P. R. R. 367, 371; *Emanuelli v. Court,* 49 P. R. R. 756, 758; *Méndez v. Court,* 50 P. R. R. 671, 674; *Ortiz v. Court,* 53 P. R. R. 38; *Santana v. Court,* 55 P. R. R. 419, 421).

The District Court *exceeded its jurisdiction or powers in deciding and acting as if the estate left by the testator at his death, had been subject to a judicial administration, without same having ever been sought or decreed in any manner,* as required by Section 23 of the Law of Special Legal Proceedings (Sec. 556, *Code of Civ. Proc., P. R.,* 1933); and in deciding and proceeding as if an executorship, supposing same had not expired, amounted to a judicial administration or universal testamentary proceeding, in contravention with legal applicable provisions in the premises; and

The District Court likewise exceeded its powers and committed harmful procedural error in denying the indisputable right of the lawful owners of the estate to the rendition of final supplemental accounts, in order they might ascertain its status (R. 108).

The petition for certiorari in the P. R. Supreme Court prayed that the decision of the District Court of Ponce be set aside and for the entry of *"any other pronouncement* (relief) *that may be deemed pertinent"* (R. 58 top), *in conformity with local law and practice,*[15] empowering the insular Supreme Court to affirm or vacate and to complete proceedings when trial courts fail to do so on erroneous grounds, particularly in view that the whole record and all facts and evidence mainly documentary, were sent up to the reviewing court as part of the return (R. 59, 187-189).

The Supreme Court of Puerto Rico in the exercise of its sound discretion granted a writ of certiorari in case #1517 (R. 59) for the review of the district court's proceedings, to prevent a *manifest failure of justice in this really extraordinary case,* after respondents herein substantially averred in their local certiorari petition, among other reasons, and notwithstanding the taking or possi-

[15] Upon vacation on certiorari, local Supreme Court may complete proceedings by giving appropriate relief (Art. 670, Code of Civil Proc., P. R., ed. 1933; and see cases *infra*, p. 64, footnote 52).

bility of an appeal (R. 491) to cover possible risks if writ were denied, that within the special and peculiar circumstances of the case:

> the District Court fell into various procedural errors, in excess of its jurisdictional powers, which required prompt redress in furtherance of justice; that the large estate whose delivery or return was demanded by the heirs had been beyond their enjoyment and possession for more than five years and a half, despite the fact that since September, 1939, the executorship had legally expired and in spite of the distribution of the estate by and among the heirs since September 9, 1938; that under such circumstances, the estate was still withheld by the ex-executor due to the serious and prejudicial stand of the District Court in virtually considering the estate as if it were subject to a judicial administration, which had never been decreed in the premises; that if said procedural errors in excess of the Trial Court's powers continued, the activities of the ex-executor, in withholding the estate against the will of the then petitioners, would be equivalent to action by a judicial administrator, subjecting the heirs and the estate to the costly, drastic and illegal inspection, supervision and control of the Trial Court, when the testator's will did not even confer on Mario Mercado Riera, any special powers at all; that the Ponce District Court also fell into procedural error in excess of its powers, in restricting the lawful right of the heirs and co-owners of the estate to have final supplemental accounts rendered to them by the withholding ex-executor; that the additional circumstance exists that the then petitioners' evidence in the trial court consisted of numerous and lengthy exhibits with the testimony of one witness, and that of opponent Mario Mercado Riera, also comprised six exhibits one of which is made up of some 150 pages and another concerns a long record of an independent litigation, and that the transcription of all such evidence in the course of an ordinary appeal, together with the delays inhering therein, would cause further protraction of the case for about one additional year, which

together with the heavy expenses and drawbacks involved in ordinary appeals, would render the latter remedy fully inadequate and disadvantageous to the speedy and full enjoyment of the hereditary estate by its lawful owner, involuntarily deprived for many years of its enjoyment, all of which would amount to an evident failure of justice requiring the remedy by certiorari as indispensable and more speedy, adequate and efficacious for the protection of the rights involved; and that certiorari has been allowed to review unjustified refusal to surrender decedent's estates to heirs with the speed required in furtherance of justice (R. 55-57).

Mario Mercado Riera, having first secured leave to intervene, filed his intervention in the insular Supreme Court and moved that the writ of certiorari be quashed on substantially the same grounds raised in his answer before the District Court of Ponce, with any *"other pronouncements that this Honorable Court may deem pertinent"* (R. 65, 66, 363).

The ex-executor urged no objection to the Supreme Court's jurisdiction in the premises nor did he aver any constitutional or other federal question.

Pedro M. Porrata, ex-commissioner for partition, filed in the insular Supreme Court a so-called special appearance[16] substantially alleging that for the Court to pass upon questions relating to the commissioner's pretended duties and functions as such, he should be heard, as it would affect rights pertaining to his office without due process, in alleged violation of the Organic Act and the federal Constitution, without specifying the legal provisions involved. Porrata then prayed that the writ of

[16] Appearance is not special if not limited to challenging Court's jurisdiction over the person or if Court's judgment is invoked on any other questions (*Glass Works, Inc., v. Keegan*, 43 F. Supp. 153, 159; *Ins. Co. v. Bridge Co.*, 37 F. 2d 695; *U. S. v. Collins*, 55 F. 2d 70, 72 bot.; *Quinn v. U. S.*, 58 F. 2d 19, 20 mid.; *Richardson, etc., v. Scott*, 72 L. ed. 497).

certiorari issued be quashed "*with any other proper pronouncements*" (R. 67-69). At the same time (May 24, 1943), *the said Pedro M. Porrata lodged an answer to the certiorari petition in the local Supreme Court* (*No. 1517*), *joining issue on the merits* and practically urging the same objections that had been raised by the ex-executor Mario Mercado Riera (R. 83-96, 65; 921 mid.). This answer by Porrata seems to be wholly ignored in petitioners' brief here.

The record thus exhibits that ex-commissioner Porrata, by his voluntary intervention[17] in the local Supreme Court, invoked its jurisdiction and power on the merits (R. 83-96) to set aside the writ of review issued and "*to make any other proper pronouncements*" (R. 69), besides arguing the case at the hearing before the Supreme Court through his counsel (R. 96 bot.). Porrata was, therefore, fully heard in every respect (R. 921; 152 F. 2d. 91, col. 2 bot.).

The Supreme Court of Puerto Rico, upon July 14, 1943, after holding that the compromise agreement executed by all interested parties herein on September 9, 1938, could not be reasonably construed as extending the executorship; that it amply provided for the adjudication of the estate among the four heirs and for the payment of liabilities and legacies; that, as a matter of law, upon the expiration of its term, the executorship concluded *ipso jure* and the further execution of the testator's will devolved upon the heirs; that the fundamental question

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[17] Puerto Rican practice follows rule that intervenor becomes a party to the action (*Fernandez v. Avellanet*, 16 P. R. R. 61; *Galbreath v. Trust Co.*, 134 F. 2d 569; *U. S. v. Pate*, 47 F. Supp. 965, 968); submits to the jurisdiction of the Court (*President, etc., v. Merritt*, 59 Fed. 6); accepts the case as it stands (*Revilla v. Court*, 39 P. R. R. 57, 63 mid.); lacks power to change the issues or to raise new ones and cannot urge dismissal of proceeding (*Miller v. Perytes*, 71 F. 2d 804, 807; *Trust Co. v. Jones*, 16 F. 2d 236, 239; *Thompson v. Deal*, 49 F. Supp. 366, 369); intervenor admitted to proceeding as it stands (*Vinson v. Washington Gas L. Co.*, 88 L. ed. 883; *Columbia, etc., Corp. v. American Fuel & P. Co.*, 88 L. ed. 1338).

"which is the gist of the whole controversy" is whether or not the executorship terminated by virtue of the expiration of the period which the testator or the law allowed the executor or whether the heirs, by their acts in accordance with the compromise contract, could extend said period; and, *after considering applicable provisions of local law,*[18] as construed by Spanish writers and the insular courts, concluded that a judicial administration had never been sought nor in any manner decreed; that the executorship in this case legally expired upon September 1, 1939, when the estate should have been delivered to the heirs, notwithstanding testator's extension of the executorship to whatever time might be necessary since any such extension should have been expressly fixed in the will pursuant to local law; that neither the executor nor the commissioner for partition complied either within the periods fixed or subsequently, with the terms of the compromise agreement (R. 97-120); and the Supreme Court below, thereupon entered its judgment vacating the order of the Ponce District Court and ordered the ex-executor Mario Mercado Riera to deliver the estate involved to the heirs and to render them supplemental accounts, for all of which 60 days were allowed[19] (R. 120 mid., 121).

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[18] As to deference due understandings in matters of local law as expressed by the insular Supreme Court, see among other cases: *Matos v. Hermanos,* 81 L. ed. 728; *Sancho v. Texas,* 84 L. ed. 401; *Porto Rico v. Rubert,* 86 L. ed. 1081; *Torres v. Bank,* 110 F. 2d 381, 383; *De la Torre v. National City Bank,* 110 F. 2d 976, 983. cert. den. 85 L. ed. 428; *Buscaglia v. District Court, etc.,* 145 F. 2d 275, 285, cert. den. 65 S. Ct. 434; *De Castro v. Bd. of Comm'rs,* 136 F. 2d 419, 425, affd. 88 L. ed. 1384; *Hijos v. Commins,* 88 L. ed. 1396, aff'g summary dismissal of appeal from judgment construing contracts under local law.

[19] Without even allowing the 60 days fixed by the Supreme Court to elapse, the ex-executor Mario Mercado Riera, petitioner here, admitted having completely disconnected himself with the estate "*in every way, except as one of the co-proprietors of the same,*" and that "*all the affairs of said estate should be handled through the co-heirs and not through the executorship*" (R. 156, 157 mid.), and he also ren-

From said judgment entered in certiorari #1517, appeals to the first Circuit Court of Appeals were attempted by Mario Mercado Riera, *as "executor in this case"* (R. 123 bot.), and by Pedro M. Porrata, *as alleged "commissioner"* (R. 126). November 23, 1945, the Court of Appeals, after full and exhaustive consideration, affirmed the judgment of the Supreme Court of Puerto Rico (R. 912-933; 152 F. 2d 86-97).

Certiorari #1516 (Local Supreme Court):

This separate proceeding was a claim for alleged fees which attorneys Zapater and Ochoteco filed in the Ponce District Court on November 18, 1941 (R. 370), for services said to be rendered to Mario Mercado Riera from September 9, 1938, to October 27, 1941 (R. 366-368). The said attorneys estimated the reasonable worth of their services at $60,000 and asked the Ponce District Court to fix the amount thereof. In their petition for fees (paragraph 5), they expressly acknowledged that in the compromise agreement of September 9, 1938, concluded by and between the heirs and others, *"with the agreement" or consent of attorneys Ochoteco and Zapater,* the sum of $12,500[20] was agreed upon as their fees, expenses and costs of all kinds whatsoever, for their professional services to the testator, the ex-executor of the estate, *"and for any other reason (concepto) in connection with the*

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dered *final supplemental* accounts, etc. (APPENDIX, pp. 110, 115). Shortly afterwards, respondents and co-heir Margarita Mercado Riera paid their three-fourth share of all legacies with interest and other due liabilities (APPENDIX, p. 112).

Porrata, the ex-commissioner, also stated in the local Supreme Court that he did not have any of the properties of the estate in his possession and did not have *"any objection whatsoever to have them administered * * * by the four co-heirs, as provided by the judgment of the Supreme Court"* (R. 141 mid.).

[20] A disbursement of $12,500 was charged to the heirs or entered for accounting purposes, as executor's lawyers' fees (R. 240 mid., 104, 363 mid., 545 bot.).

inheritance of Don Mario Mercado Montalvo," including fees for the preparation and execution of certain then *prospective* deeds, etc. (R. 367 mid., 545 bot., 546, 5).

Service of said petition or claim for alleged fees was attempted in the Ponce court upon attorneys (R. 369, 374 bot.) who had acted for respondents in other and separate proceedings; but no service was made upon respondents themselves, Adrián and María-Luisa Mercado Riera, who were the really interested parties (R. 380).

The co-heir Margarita Mercado Riera stated that she "did not desire to sign the said motion" (R. 375 bot.).

On November 26, 1941, Adrián and María-Luisa Mercado Riera, respondents here, specially appeared in the Ponce District Court to question *jurisdiction over their persons* and moved the quashing of service upon attorneys who acted for them in other and separate proceedings, on the grounds that claimants for alleged fees, Ochoteco and Zapater, were not parties to any pending proceeding, nor had there been any judicial administration of the estate either requested or decreed by any Court, so as to entitle them to come into it by a "motion to fix attorneys' fees"; that Mario Mercado Riera had accepted the executorship on September 1, 1937, without any special powers from the testator; that said executorship expired on September, 1939; that decedent's heirs had accepted the inheritance on or before September, 1938; that the co-heirs, through compromise agreement executed September 9, 1938, had agreed upon a division or adjudication of the estate among themselves; and that the pretended service on attorneys Celestino Iriarte and José A. Poventud was invalid, as they represented respondents in other and different proceedings, and that did not warrant their acceptance of service for said respondents nor did it empower anyone to attempt it in such fashion (R. 380-381, 98 top).

November 26, 1941, the foregoing special appearance and motion to set aside service on the attorneys, instead of on the parties themselves, was heard by the Ponce District Court (R. 384), which received documentary evidence (R. 186) and denied it on March 23, 1943.

Upon denial of reconsideration by the District Court (R. 485), which was excepted to (R. 489), Adrián and Margarita Mercado Riera applied to the insular Supreme Court for a writ of certiorari to review the order of March 23, 1943, on the ground that the Ponce District Court was without jurisdiction over the persons of Adrián and María-Luisa Mercado Riera, appellees in the Court of Appeals, respondents here, when it made the said unappealable order of March 23, 1943, and that it thereby fell into serious and prejudicial errors of procedure for the reasons specifically set out in their certiorari petition in case #1516 (R. 1-11), before the local Supreme Court.

The Supreme Court of Puerto Rico granted the writ of certiorari in the usual form. addressed to the Ponce District Court and to Judge Gadea Picó (R. 12).

On the filing of the return in the insular Supreme Court (R. 186), attorneys Ochoteco and Zapater intervened *pro se* and moved to quash the writ of certiorari issued, after asserting the validity of the assailed services (R. 19-23).

The ex-executor, Mario Mercado Riera, also secured leave to and did voluntarily intervene and move the local Supreme Court to set aside the writ *"with any other proper pronouncements* that the Court may deem pertinent" (R. 17-18).

As will be readily observed, in certiorari No. 1516 no other issue or question was raised, involved or decided by the Puerto Rican Supreme Court, but that relating to the *invalidity of service* of Ochoteco and Zapa-

ter's claim for fees. On the validity of that service depended the Ponce District Court's power to proceed against respondents.

No question of a federal character or affecting the jurisdiction of the insular Supreme Court was raised in No. 1516. Instead, its power was invoked by intervenor and now petitioner, Mario Mercado Riera, to quash the writ of certiorari issued or to enter *"any other pronouncements"* that that Court *"may deem pertinent"* (R. 18 bot.).

May 24, 1943, the local Supreme Court heard this matter (R. 23) and on July 14, 1943, rendered its opinion substantially sustaining (R. 108) the grounds urged in certiorari petition No. 1516, among them, that no special power was conferred by testator on the executor, whose duties were then those arising under Section 824 of the Civil Code (R. 99 bot., 117, 119); that the heirs agreed upon the distribution of the estate among themselves by compromise agreement of September 9, 1938 (R. 116, 119 mid.); that the executorship in this case expired on September 1, 1939, when any further fulfillment of testator's will devolved upon the heirs (R. 112, 114); that no judicial administrator was ever sought or obtained, so as to place the estate in *custodia legis* (R. 104 bot.-105, 116 mid.-120); and that the order entered by the Ponce District Court on March 23, 1943, should be set aside, as service of the claim for fees "should have been made directly on the heirs in the proper proceeding" (R. 120 bot., 98 top).

Thereupon, the Supreme Court of the Island entered *a separate judgment* granting petition of certiorari #1516 and vacating the Ponce District Court's order of March 23 (R. 24).

Claimants, attorneys Ochoteco and Zapater, then moved the said Supreme Court for a rehearing (R. 33), which was denied (R. 39).

Ochoteco and Zapater, the parties who, if at all, might have felt aggrieved by the insular Supreme Court's decision in certiorari #1516, *were not appellants in the courts of appeals* from the judgment of the local Supreme Court vacating the attempted service of their claim for alleged fees.

However, Mario Mercado Riera, who as co-defendant below, was favored by the reversing judgment entered by the local Supreme Court, in #1516, attempted to appeal therefrom to the Court of Appeals (R. 24 bot.), despite the fact that the Puerto Rico Supreme Court, upon denying the ex-executor's motion for a supersedeas bond, held that said Mario Mercado Riera, petitioner here, *is not "the party affected by the judgment rendered in this case" #1516* (R. 39 mid.).[21]

Certiorari #1518 (Supreme Court of Puerto Rico):

After expiration of the testamentary executorship (R. 112-113), Mario Mercado Riera, the ex-executor, started another proceeding in the Ponce District Court allegedly under Sections 824 and 825 of the Civil Code, for leave to use estate funds and to sell certain properties belonging to the heirs for the alleged purpose of partially paying some legacies (R. 167 bot.-169, 377-378, 450).[22]

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[21] It is obvious that Mario Mercado Riera lacked appealable interest (see: *In re Schwartz*, 89 F. 2d 172, 173; *In re Kane*, 48 F. 2d 97, 98; *Olsen v. Jacklowitz*, 74 F. 2d 718; *Harding v. Nat. Bank*, 31 F. 2d 914).

[22] Sufficient funds were timely provided by the heirs through their compromise contract, for the payment of legacies and other liabilities (R. 101 mid., 539 bot.). The Supreme Court held that neither the executor nor the commissioner complied, either within the terms fixed or subsequently with the terms of the contract (R. 116 mid., 119 mid). Respondents and co-heir Margarita Mercado Riera *have already paid* their three-fourth share of all legacies with interest (APPENDIX, p. 110).

The ex-executor, petitioner here, attempted to serve his so-called motions on attorneys Celestino Iriarte and José A. Poventud, instead of making personal service on the real parties in interest, Adrián and María-Luisa Mercado Riera, respondents on this record (R. 169, 379, 542).

They specially appeared before the Ponce District Court and moved for the quashing of such service upon attorneys Iriarte and Poventud, as invalid and insufficient to confer jurisdiction over them *in personam*, for the reasons that Mario Mercado Riera qualified as testamentary executor on September 1, 1937, without any special powers from testator; that the heirs accepted the inheritance on or before September 9, 1938; that said executorship expired on or before September, 1939; that no judicial administration of the estate had either been sought or decreed; that the heirs had already agreed upon the adjudication of the estate through their compromise agreement of September 9, 1938; and that any previous representation of Adrián and María-Luisa Mercado Riera by attorneys Iriarte and Poventud, did not empower the latter to receive or accept service in the new proceeding nor did it warrant summoning them therein instead of the interested parties themselves (R. 170, 461).

The Ponce Court heard the matter (R. 464). Upon March 24, 1943, it denied respondents' motion to quash service (R. 478, 171 mid.), later refusing reconsideration thereof (R. 483-484, 488 mid., 171).

Thereupon, respondents herein petitioned the Puerto Rico Supreme Court (R. 165-175) for a writ of certiorari to review the unappealable (R. 174 bot.) order denying quashal of said service, on the ground that manifest and harmful errors of procedure and in excess of the Trial Court's jurisdiction had been committed, particularly for

the reasons set out by petitioners, now respondents (R. 172-175), and also in their special appearance and motion for the vacation of the above-named service in ♯1518 (R. 170, 461). The Island's Supreme Court issued the writ of review (R. 176-178).

After filing of the return in said insular Supreme Court (R. 190), the ex-executor, Mario Mercado Riera, voluntarily intervened in certiorari proceeding ♯1518 and moved that the writ of certiorari issued be set aside and for "*any other pronouncements*" that the Court "*may deem pertinent*" (R. 179-180 bot.), thus invoking the Supreme Court's jurisdiction in the premises.

On May 24, 1943, the Puerto Rico Supreme Court below heard this case (R. 181). It delivered its opinion upon July 14, 1943 (R. 97-121). The Supreme Court substantially upheld the grounds urged in certiorari petition ♯1518. They were practically the same as those adduced in ♯1516, which have already been summarized here.

A separate judgment was thereupon entered by the local Supreme Court, granting certiorari petition ♯1518 and setting aside the Ponce Court's order of March 24, 1943 (R. 181 bot.).

From that judgment, Mario Mercado Riera has likewise attempted to appeal to the Circuit Court of Appeals (R. 182). This, notwithstanding the sole question obviously submitted in that case and decided below, was the invalidity of service of petition in the trial court, which involved no constitutional or other federal question. Moreover, the local Supreme Court, *in view of the nature of the judgment in ♯1518,* denied a motion by Mario Mercado Riera (R. 184) and held that "the fixing and giving of a supersedeas bond does not lie" (R. 185 bot.).

THE VARIOUS AND SEPARATE JUDICIAL PROCEEDINGS CONCERNING DECEDENT'S ESTATE:

In view of the placement[23] in the printed record, occasionally without chronological order, of the several and different judicial proceedings in the insular courts, in connection with the estate of decedent, Mario Mercado Montalvo, a brief explanation regarding them seems necessary in order to a proper understanding of the questions now sought to be urged.

Petitioners seem to intimate (Br. 67-J), without any foundation whatever, that there was only one case below involving the whole estate. But under prevailing local law and practice, *there are divers and independent proceedings*[24] which are usual during the settlement of a decedent's estate, when no judicial administration is asked by the heirs and decreed by a court of justice in order to place the estate in *custodia legis*.[25]

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[23] Petitioners' respective designations, though expressing that record on appeal "shall contain the complete record of the case," also state that they promptly *instructed* the Clerk of the Supreme Court of Puerto Rico "as to the contents of the record" on said appeals (R. 132-133 mid.).

[24] In Puerto Rico, proceedings for probate of will, for letters testamentary, for securing an inventory for approval of a partition, for settlement of accounts, for surrender of the estate to the heirs, etc., are independent of one another, and each arises from different legal provisions, and is subject to separate pleadings, filing fees, hearings and judgments (*Marvez v. Court*, 48 P. R. R. 152, 155 mid.; *Díaz v. Court*, 49 P. R. R. 732 bot.; *Boerman v. Heirs of Boerman*, 52 P. R. R. 593; and see *Labarthe v. Neuman*, 23 P. R. R. 640; *Mercado v. Mercado*, 152 F. 2d 89.

A judicial administration must be independently and separately petitioned for and judicially granted under Section 556, Code of Civil Procedure, ed. 1933 (*Dexter v. Nussa*, 13 P. R. R. 340; *Sanchez v. Calderón*, 19 P. R. R. 1043, 1046; *Vicens v. Cruz*, 20 P. R. R. 179, 181; *Sabater v. Escudero*, 23 P. R. R. 794; *Ex p. Suau*, 27 P. R. R. 890; *Ex p. Vega*, 28 P. R. R. 361; *Aponte v. Heirs of Perez*, 48 P. R. R. 437, 441-442; *Perez v. Perez & Co.*, 41 P. R. R. 844, 845; *Sucn. de Jesús v. Court* (May, 1945), 65 D. P. R. 3 bot. (English ed. not yet out).

[25] No judicial administrator was ever sought or appointed to place the estate in *custodia legis* (R. 104, 105, 116 bot., 119, 120). Petitioner Porrata even acknowledged that testator provided in his will "everything that is necessary for an *extrajudicial* liquidation," *which always is beneficial to the heirs, legatees and creditors of the estate* (R. 799 near bot.).

With respect to the estate left by Mario Mercado Montalvo, these separate proceedings brought in the insular courts may be severally summarized as follows:

1. *Probate of testator's holographic will:*

The probate of a holographic will is an independent proceeding established by the *Civil Code,* ed. 1930, Secs. 639 to 643.

The petition for such probate was filed on August 28, 1937 (R. 498), and after hearing of the matter (R. 520), *it was closed by decree* of the Ponce District Court accepting the will as proven and ordering it recorded in the protocol of a notary public (R. 521-523; R. 915, 152 F. 2d 89).

2. *Application for letters testamentary:*

Section 597 of the Code of Civil Procedure, ed. 1933, provides that when an executor accepts appointment under a will, he must file *with a notary* or officer in whose office the will is recorded, a written acceptance thereof, with his oath of office and that the District Court of decedent's domicil or of the place where the property is located, shall, on the filing of the notary's certificate as to such acceptance and oath, issue *letters testamentary "which shall be evidence of his authority."* In pursuance of these provisions, the then executor appointed by testator's will, made an *ex parte* application (R. 191) to the Ponce District Court for the issuance of letters testamentary. Thereupon, dated September 1, 1937, the District Court entered its decree granting such letters in proof of the then executor's acceptance of the trust (R. 915-916; 152 F. 2d 89).

Contrary to what petitioners state in their brief (p. 63B), under Puerto Rican law a petition for letters tes-

tamentary (§597, *supra*), as evidence of an executor's limited duties, *is quite different from a petition for a judicial administration* of an *estate* or letters of administration, which must be independently and separately procured and granted under §556, Code of Civil Procedure, ed. 1933. See footnote 24 (*ante*, p. 29).

3. *Qualification by commissioner for partition:*

Adopting, by analogy, the same procedure followed by the then executor, Pedro M. Porrata, co-petitioner here, applied *ex parte* to the Ponce District Court for "credentials" showing his authority as auditor-partitioner (R. 502-566) and, accordingly, a decree was made on September 8, 1937 (R. 566). Reciting that the *partitioner is "subject to the provisions of articles 826 to 839 of the aforesaid Civil Code of 1930,* which articles grant the executor a period of one year from the date of his acceptance, for the purpose of performing his trust and closing the executorship" (R. 568 bot., see footnote 4, *ante*, p. 5). Porrata asked for and obtained an order after judgment in that proceeding, extending his term to comply with his duties to deliver "the definite partition of the estate to the parties entitled to it until the sixth day of September, 1939" (R. 570, 571 mid.).[26] See also opinion below; R. 916, 152 F. 2d 89, col. 1 mid.

4. *Case #1213, for acceptance of inheritance by one heir on benefit of, and for order to prepare, inventory of assets and liabilities.*

This matter is regulated by the Civil Code of Puerto Rico, ed. 1930, Sections 964 to 988. Under Sections 964, 968, par. 2, and 971, any heir may accept an inheritance

[26] The local Supreme Court found that neither the executor nor the commissioner complied, either within the terms fixed or subsequently, with the contract (R. 116 mid., 119), and that the latter had neither sought nor been granted any additional term (R. 115, 119).

on benefit of inventory by requesting, at the same time, the formulation of an inventory of the estate. As no inventory was forthcoming from the then executor, who assumed custody of the inheritance, notwithstanding certain extensions granted him therefor (R. 99, 100 mid.), co-heir Adrián Mercado Riera, one of respondents herein, brought the said proceeding No. 1213[27] where he secured an order from the Ponce District Court to compel Mario Mercado Riera to produce in court a statement of assets and liabilities of decedent, with all other required data, for the preparation of an inventory that might apprise the heirs as to testator's economic situation (R. 100, 774, 780).

This case was initiated in the Ponce District Court by an independent petition (R. 774), with its own separate pleadings (R. 788, 790, 797), hearing and decision (R. 811, 819).

Upon review on petition of appellant Porrata, who had intervened in the case, the Supreme Court of Puerto Rico upheld the District Court's order for the preparation of an inventory by the then executor (R. 857, 863 mid.; *Porrata v. District Court*, 53 P. R. R. 141, 184), and in compliance with the District Court's order, as affirmed by the local Supreme Court, Mario Mercado Riera submitted an inventory in proceeding #1213, *which the District Court then closed by order of September 12, 1938* (R. 891, 892, 893 bot.). See also opinion below; R. 916-917, 152 F. 2d 89.

[27] Though in such proceeding, under Section 974 of the Civil Code, ed. 1930, a judicial administration could have been asked, none was demanded nor provided for therein as correctly found by the Puerto Rican Supreme Court (R. 104 bot.; *Mercado v. Corte*, 62 D. P. R. 376 bot., Spanish edition).

5. *Proceeding for settlement of final accounts rendered by Mario Mercado Riera up to March 4, 1940.*

The duty to submit accounts by extrajudicial executors to the heirs, legally arises from *Section 829* of the Civil Code of Puerto Rico, ed. 1930.

Moreover, the co-heirs in their compromise agreement of September 9, 1938, stipulated that the then testamentary executor, petitioner here, should render to the heirs a *final account within the mandatory period of 15 days from the execution of such contract* and that any opposition or controversy in connection with the items of the account, should be submitted to a competent court unless an amicable agreement could be reached within 5 days after demand or notice by any of the parties (R. 45, 102 mid., 542 bot.).

The period of 15 days fixed for the then executor to file his *final accounts,* expired on September 24, 1938. The accounts were rendered to the heirs one year and six months thereafter, *i. e.,* on March 6, 1940 (R. 105, 234, 235-242) by petitioner, Mario Mercado Riera as alleged "executor" (R. 234), and not as "'judicial administrator, as mistakenly intimated in petitioners' brief (p. 69-L). It was through that agreed medium (rendition of final accounts, see 152 F. 2d 91, col. 1, 96, col. 2 bot.), that the ex-executor was to charge to and/or claim from the heirs any proper, legal or warranted disbursements from estate funds; and so Mario Mercado Riera claimed certain amounts for alleged fees to attorneys, scholarships to some students, alleged traveling expenses, etc. (R. 236, 237, 238, 240).

But co-heirs Adrián and María-Luisa Mercado Riera, through the stipulated procedure and believing there were numerous omissions, charges or claims by the ex-executor which were unwarranted or improper, due to his lack of

power, as illegal, unnecessary or otherwise, filed in the Ponce District Court (March, 1940), their objections, original and supplemental (R. 225-233, 242-244), challenging the said final accounts and serving demand upon their co-heirs that, within five days, they indicate their acceptance of the objections or any propositions or explanations they might wish to make to enable objectors to determine whether an agreement was probable, and otherwise to submit the controversies to court (R. 233), and further reserving any other or further objections in the premises (R. 243 bot.).

A detailed answer or reply was thereupon filed by the ex-executor (R. 269-284), petitioner here. This separate proceeding was heard before Judge Sepúlveda, of the Ponce District Court, commencing November 12, 1940, the trial and presentation of evidence taking a total of 31 days (R. 398 bot.).

On February 19, 1942, the Ponce District Court, through Hon. Judge Sepúlveda, rendered his opinion (R. 397-426) and entered a final decree sustaining many of the objections to the said final account rendered by Mario Mercado Riera, petitioner on this record, whereby the latter was ordered to make restitution to the heirs in an amount which, with interest allowed, exceeds $125,000 (R. 427-430). This is the decision which petitioners, in their Statement on Appeal below (p. 45), justly characterized as *"very careful and thorough"* and *"impartial in its tone and method."*

Among other items objected to by Adrián and María-Luisa Mercado, Judge Sepúlveda orders Mario Mercado Riera to make restitution as to $11,244.16, with legal interest, because Mario continued to spend estate funds on the restoration of a house which had been conveyed to him (R. 400 mid., 427); $16,392.25, with legal interest, as

being an improper entry against the estate, which should have been charged to and paid for by the firm Mario Mercado e Hijos (R. 404, 427 bot.), of which Mario Mercado Riera was also managing director (R. 424), and member with an interest of 55% (R. 539); $20,019.15, as improperly charged to the heirs and paid on a sum of money belonging exclusively to the said partnership Mario Mercado e Hijos (R. 419-429 mid.); $13,452.29, with interest, which was improperly paid out of estate funds in connection with the local inheritance tax, without prejudice to objectors' right to make further objections against items of such nature in future supplemental accounts (R. 418 mid., 429); $23,500 which should be restored to the final account as improper outlays for alleged attorneys' fees and traveling expenses (R. 408 mid.-410, 428 mid.); $7,208.11, as an excessive charge and self-payment by the ex-executor, petitioner here, for his alleged compensation (R. 413-415, 429), etc.

Mario Mercado Riera then *appealed to the Supreme Court of Puerto Rico* from said final decree on the accounts (R. 432); and co-heirs Adrián and María-Luisa Mercado also appealed therefrom in part (R. 437), as a few of the objections to the final account were overruled by the District Court of Ponce (R. 401-403, 423-425).

These appeals are still pending and undecided in the insular Supreme Court (R. 105, 119 mid., 438-444).

The foregoing clearly shows that matters concerning claims between the ex-executor and the heirs respecting alleged attorneys' fees, taxes and any other outlays or disbursements out of or concerning hereditary funds have been submitted to a judicial adjudication, in accordance with local law and their compromise agreement, through the separate proceeding brought by the interested parties

and independently conducted for the settlement of the ex-executor's final account to March 4, 1940 (R. 105), which is still pending decision, on appeal, by the Supreme Court of Puerto Rico. That is why the Court of Appeals stated that, if there is any question of fees in the background, "the accounting proceeding, not this, would be the appropriate place to settle it" (R. 931; 152 F. 2d 96, col. 2 bot.).

6. *Proceeding for surrender of the estate to the heirs or co-owners, which originated Certiorari No. 1517.*

7. *Claim for alleged fees by attorneys Ochoteco and Zapater, which gave rise to Certiorari No. 1516.*

8. *Petition to sell certain properties of the estate for the alleged purpose of partially paying some legacies, which caused the Certiorari Case No. 1518.*

The legal source, separate initiation, pleadings, conduct, hearings and different judgments in these three independent proceedings have already been sufficiently dealt with in this brief (*ante*, pp. 12, 43, Cert. #1517; pp. 22, 43, Cert. #1516; pp. 26, 43, Cert. #1518).

9. *New proceeding for purported approval of a so-called report by ex-commissioner Porrata.*

Dated March 14, 1940, ex-commissioner for partition Porrata, co-petitioner here, *extrajudicially* sent to testator's heirs what he designated copy of "a tentative Partitioner's Report" (R. 597, 607-770).

March 16, 1940, Adrián and María-Luisa Mercado Riera answered Porrata's letter and urged numerous well-grounded objections (R. 598-603) to the so-called partitioner's report. Among others, the objectors stated (R.

598 mid.) that such *draft of partition should have been formally prepared within 10 days from the payment of the local inheritance tax* and should have been perfected exclusively *in compliance with compromise agreement* of September 9, 1938, clause 3, paragraphs (i) and (m), *which prohibit enlargement of draft of partition except with respect to description of properties of the estate,* and forbade that the parties' agreement should be modified, added to or changed in any manner whatsoever (R. 103 bot., 545; 152 F. 2d 90, 91, col. 1).

Yet, matters which did not concern the ex-commissioner and which were involved and at issue (sub-judice) in the proceeding to settle the ex-executor's final account, were also attempted to be included in the said draft of partition and thus to be imposed upon the heirs. So, objection was further urged on that score (R. 598 bot.-600). Additional specific objections were made by respondents Adrián and María-Luisa Mercado Riera, who also reserved all of their rights in the premises (R. 600-601).

Further, the said compromise agreement of September 9, 1938, concerned Porrata only as *then testamentary commissioner* for partition (R. 527 mid., 544-545); *but Porrata allowed his term of office to expire on September, 1939, without complying with the terms of the said agreement* (R. 116 mid., 119 mid.).

November 26, 1941 (R. 395), Porrata filed in the Ponce District Court his so-called extemporaneous draft of partition, along with a petition (R. 385 *et seq.*) for its purported approval (R. 394, par. 8), which he attempted to serve on attorneys Iriarte and Poventud instead of on respondents Adrián and María-Luisa Mercado Riera, who were, if at all, *the interested parties* (R. 395).

Thereupon, said Adrián and María-Luisa Mercado Riera specially appeared in the Ponce District Court and

moved for the quashing of the attempted service in that new proceeding, because personal notice or summons was required on the aforesaid movants, since any prior representation of attorneys in other matters did not authorize them to accept nor anyone to attempt service on them in lieu of on the parties themselves; and as it appeared that prior to the filing of said draft or report and petition for its purported approval *Porrata had ceased as commissioner for partition of decedent's estate,* respecting which there had been no judicial administration decreed, and the heirs, further and with the acceptance of the then partitioner, had agreed upon a distribution of the hereditary estate (R. 396-397).

No hearing thereon was obtained by Porrata and, hence, no action has been taken by the Ponce District Court upon the foregoing motion for the quashal of service in such new proceeding. Instead, *Porrata chose to intervene in certiorari proceeding No. 1517 before the insular Supreme Court* (surrender of the estate to the heirs) and there raised the matter concerning his alleged draft of partition, accompanying his so-called report or draft (R. 69, 70) and also Adrián and María-Luisa Mercado's motion for quashal of service (R. 81), praying the Supreme Court that the writ of certiorari issued be annulled "with any other proper pronouncements" (R. 69 top).

At the same time (May 24, 1943), petitioner Porrata also filed an answer in Certiorari No. 1517, before the local Supreme Court, taking issue on the merits, substantially raising the same points urged by the ex-executor (R. 65), and so inviting action thereon by the insular Supreme Court (R. 83, 88 *et seq.*), with jursidiction of the subject-matter and of the parties thus before it. That the Supreme Court below heard intervenor and passed upon the question submitted, not simply as involved in the case, but at the invitation of Porrata him-

self, is not only right, but constitutes a result as to which said petitioner cannot speculate or complain.[28]

Porrata then, through counsel, argued his boundless contentions before the Puerto Rican Supreme Court (R. 96 bot.), which upon July 14, 1943, held that neither the executor nor the commissioner complied, either within the terms fixed or subsequently with the compromise contract (R. 115, 116, 119); and that, among other things, the heirs had accepted the inheritance and agreed upon its distribution (R. 102, 116, 119 mid., 542 mid.).

And in Puerto Rico, a voluntary distribution of the estate among the heirs, specially if consented to by the then (1938) partitioner (R. 103, 116 top) and, *a fortiori*, if the latter subsequently permits his incumbency to expire (R. 115), renders superfluous any further action by the ex-commissioner.[29]

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[28] See: *Mercelis v. Wilson*, 59 L. ed. (U. S.) 370, 371, col. 2 mid.; *Devine v. Zimmerman*, 133 F. 2d 850, 852 mid.; *Pitcairn v. Fisher*, 78 F. 2d 649, 651; *Power Co. v. Co.*, 65 F. 2d 298, 302 mid.

An intervenor becomes a party to the proceeding (*Fernandez v. Avellanet*, 16 P. R. R. 61; *Galbreth v. Trust Co.*, 134 F. 2d 569; *U. S. v. Pate*, 47 F. Supp. 965, 968), submits to Court's jurisdiction (*President, etc., v. Merrit*, 59 Fed. 6), accepts the case as it stands (*Revilla v. Court*, 39 P. R. R. 57, 63 mid.), lacks power to change the issues or to raise new ones and cannot urge dismissal (*Miller v. Perytes*, 71 F. 2d 804, 807; *Trust Co. v. Jones*, 16 F. 2d 236, 239; *Thompson v. Deal*, 49 F. Supp. 366, 369).

[29] Sec. 604, Code of Civil Procedure, ed. 1933; *Ex p. Sotomayor*, 24 P. R. R. 172; *Irizarry v. Registrar*, 22 P. R. R. 88; *Galindo y Escosura, Legislación Hipotecaria*, Vol. II, pp. 257, 258; *Pellicia v. Court*, 36 P. R. R. 588.

ARGUMENT.

I.

The Supreme Court of Puerto Rico had complete jurisdiction on certiorari to the District Court of Ponce in Cases ♯1516, ♯1517 and ♯1518 (Petitioners' brief, Point I, pp. 22-33).

Petitioners here, appellants below, amazingly purport to question, as they did for the first time in the Court of Appeals, the jurisdiction of the insular Supreme Court on certiorari to the Ponce District Court, under Section 40 of the Organic Act of Puerto Rico (48 U. S. C. A., Sec. 861).

To the contrary, respondents believe that even the most cursory examination of Section 40 of the Puerto Rico Organic Act shows that dismissal of the point raised seems foreordained.

(A) *Insular Supreme Court's unrestricted power to construe and modify decisions on local laws.* Petitioners' points on this score are not easily understood, except by hesitatingly accepting their timid assertion (Br. 26 bot.) that it is to be presumed Congress, by Section 40 of the Organic Act (1917), intended to continue the operation of insular tribunals under existing laws *"with the judicial interpretation that had theretofore been put upon them,"* by the insular Supreme Court.

Of course, respondents deny, in accord with the Court of Appeals, that prior to the last Organic Act for Puerto Rico (1917), the insular Supreme Court had construed the local certiorari law of 1904 as withholding from litigants discretionary review under it of rulings by inferior courts, whether appeal lay or not, where there was pro-

cedural error or action taken in excess of a court's powers or jurisdiction (R. 924; 152 F. 2d 86, 92-95).

But *even assuming arguendi gratia* that such had been the case, the *contention that* the Puerto Rico *Supreme Court could not modify, change,* narrow or even *overrule its prior decisions* concerning the local certiorari act of 1904, is evidently far-fetched and untenable.

By the general rule of international or public law, whenever political jurisdiction and legislative power over territory are transferred from one nation to another, the courts, laws and institutions of the ceded country, enacted for the protection of private rights, unless inconsistent with the Constitution of the acquiring government, continue in force until repealed or modified by the new sovereign.

Out of abundant caution[30], Sections 8 and 33 of the first Organic Act (known as Foraker Law) for Puerto Rico of 1900, continued in force, except as repealed or amended by the local legislature or by act of Congress, all insular laws and ordinances then in force, and vested the judicial power in the courts of Puerto Rico functioning on such date, under and by virtue of the then prevailing laws. The present Organic Act, enacted by Congress on March 2, 1917, Sections 40 and 57, similarly vested the judicial power in the local tribunals as organized on March 2, 1917, under and by virtue of laws then in force, and continued their jurisdiction and form of procedure, as also their various officers, as provided by law at said date until otherwise enacted.

These provisions in the organic acts were mere *saving clauses* continuing insular statutes not in conflict with the Constitution and laws of the United States; *but they placed no limitation or restriction on the autonomous*

[30] See *Ortega v. Lara*, 50 L. ed. 1056, col. 2 mid.; and *Ponce v. Roman, etc, Church*, 52 L. ed. 1068, 1074, col. 2 bot.

position and power of the insular Supreme Court to construe, modify, change or overrule its own decisions respecting local laws as, for instance, concerning the scope of the Puerto Rico Certiorari Act of 1904 (*Brewer v. Browning*, 115 Miss. 358, 76 So. 519, L. R. A. 1918 F. 1185[21]; *Backus v. Fort St. Union Depot Co.*, 42 L. ed. 853, 860; *W. Va. State Bd. of Educ. v. Barnette*, 87 L. ed. 1628, 1640, overruling prior decisions).

Territorial statutes thus continued in operation are to be construed as they would be if they were enacted after the adoption of a state constitution. *Nadeau v. Conn.*, 142 Wash. 242, 252, p. 913.

Courts do not make law but simply declare it. A judicial decision is but evidence of the law and an overruling decision does not change law but impeaches the prior decision as evidence of it. *Cuesta & Co. v. Treasurer*, 54 P. R. R. 82, 84; and see *Fleming v. Fleming*, 68 L. ed. 547, 549, col. 2 mid.; *Succ'n of Tristani v. Colón* (1st Cir.), 71 F. 2d 374.

This Court of Appeals below has also recently held that, on questions of local law, the territorial courts of Puerto Rico have the broad powers of other appellate courts to overrule their own prior decisions. *Ballester-Ripoll v. Court of Tax Appeals of Puerto Rico*, 142 F. 2d 11, 17 bot.

The Organic Act of 1900 (Sections 6 and 81) enacted by Congress for Hawaii, as in the case of Puerto Rico, continued in force the laws and tribunals then existing (48 U. S. C. A., Secs. 496, 631); and, notwithstanding, the construction of local statutes by the Supreme Court of

[21] Holding that constitutional provisions vesting the judicial power of the state in the Supreme Court and such other courts as are provided for by the Constitution, and also providing that the Supreme Court shall have such jurisdiction as properly belongs to a court of appeals, placed no restriction on the power of the Supreme Court to overrule or change its decisions.

Hawaii has been always accepted, even by this Supreme Court, as stating the law of the territory. *Waialua Agricultural Co. v. Christian*, 83 L. ed. 61, 72.

(B) *Organic Acts did not, by adoption, convert local statutes into federal laws.* An apparently plausible, though equally frail argument, if intended by petitioners, would be to contend that, for appellate jurisdictional purposes and by reason of Section 57 of the present Organic Act of Puerto Rico (48 U. S. C. A., Sec. 735), commonly called the Jones Act (1917), the insular Certiorari Act of 1904 became, *by adoption*, a law of the United States and that, therefore, any ruling thereon by the Courts below would involve a law of the United States or denial of a right claimed thereunder, thus originating a federal question. But even that point has been unsuccessfully urged before, based on similar provisions of the Foraker Act (1900), with resulting dismissal of a writ of error by this Honorable Court. *Ortega v. Lara (P. R.)*, 50 L. ed. 1055, 1057, col. 1.

(C) *The local Certiorari Act confers broad jurisdiction and discretionary powers.* Pursuant to authority conferred by Sections 8, 15 and 33 of the Foraker Act (1900), to legislate as it may see fit with respect to existing insular courts, as to "their jurisdiction, their procedure and all other matters affecting them," and also in accordance with Section 32 of said Foraker Act, granting general legislative powers as to all matters not locally inapplicable,[32] the Legislature of Puerto Rico, upon March 10, 1904, approved *"An Act Authorizing Writs of Certiorari."*[33]

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[32] The aim of the Foraker Act (1900) and of the Organic Act (1917) was to give Puerto Rico full power of local self-determination with an autonomy similar to that of the States and incorporated territories (*Puerto Rico v. Shell Co.* [1937], 82 L. ed. 236, 243, col. 1 top; *Peo. of P. R. v. Hermanos* [1940], 84 L. ed. 916, 918; and see *Ponce v. Roman, etc., Church*, 52 L. ed. 1068).

[33] See Laws of 1904, pp. 132-133, now embodied in Sections 670, *et seq.*, Code of Civil Procedure, ed. 1933.

The local Supreme Court and the several insular district courts were thereby empowered, generally and almost unrestrictedly, to issue writs of certiorari. *Section 1* of the statute defines the writ thus:

> "A writ issued by a superior to an inferior court requiring the latter to send to former a certified copy of some *proceeding* therein *pending, or* the record and proceedings in some cause already *terminated* in cases *where procedure* is *not according to the course of the law, and to complete the proceedings when the lower court refuses* to do so *upon erroneous grounds.*" (Italics ours.)

The local Certiorari Act does not, as appellants seem to contend, simply re-enact the traditional common law writ. It grants unbounded discretion and ample jurisdiction, as its plain wording indicates, for review by certiorari of proceedings in causes *pending or terminated,* where procedure is not according to law, *and to complete proceedings when the lower courts refuse* it *on erroneous grounds.*

In the exercise of its discretionary powers, the insular Supreme Court has from time to time and in view of the nature of each case, decided that the writ issued should be quashed where, *in absence of special circumstances* (which were shown in ¶1517; R. 55-57; R. 924-928), there is a plain, speedy and adequate remedy in the ordinary course of law, etc.

But the insular *Supreme Court has also from the beginning interpreted* the local *Act of 1904,* upon the basis *that* the granting of review by *certiorari* is *discretionary; that even though appeal might lie, the writ issues (Nuñez v. Soto Nussa* [*1908*], 14 P. R. R. 190, 192; *Sanchez, et al., v. Cuevas Zequeira* [*1915*], 23 P. R. R. 47; R. 927), whenever in its discretion the remedy by certiorari is more speedy and adequate for the protection of the rights involved, where trial courts overreach their powers, as-

sume facts not proven and otherwise commit procedural errors or proceed in excess of powers as authorized by the case before them.

That is the uniform construction placed upon the Puerto Rican certiorari statute of 1904, by the lower Supreme Court before and after the Organic Act of 1917.[34] The coverage of the Puerto Rico Certiorari Act is a matter solely for the determination of local courts (*Sage Stores Co. v. Kansas,* 89 L. ed., Adv. Ops., pp. 22, 23, col. 1, bot.). And such authoritative construction of the insular statute binds federal courts (*U. S. v. Texas,* 86 L. ed. 356, 362, col. 1, mid.; *Allen-Bradley Local v. Wisconsin, etc.,* 86 L. ed. 1154, 1163, col. 2, mid.; *Matos v. Hermanos,* 81 L. ed. 728, 730; *Puerto Rico. v. Rubert Hnos.,* 86 L. ed. 1081, 1088).

In Case #1517, the Supreme Court of Puerto Rico exercised its sound *discretionary powers*[35] and granted the writ of certiorari (R. 59), in view of the serious procedural errors and detrimental action of the Ponce District Court *in excess* (not in absence) of its jurisdictional powers and in order *to prevent a manifest failure of justice* in a really extraordinary case, such as the one here shown (*ante,* pp. 15-20). The special and peculiar circumstances warranting review therein, were also par-

[34] *Mendez v. Soto Nussa* (1907), 13 P. R. R. 366; *Nunez v. Soto Nussa* (1908), 14 P. R. R. 190, 192; *Sanchez v. Cuevas Zequeira* (1915), 23 P. R. R. 47; *Sporting Club v. Foote,* 31 P. R. R. 154, 163; *Pellicia v. Court,* 36 P. R. R. 588 (certiorari to review order refusing surrender of estate to heirs); *Comas v. Court,* 39 P. R R. 689; *Lopez v. Court,* 40 P. R. R. 478; *Franceschi v. Court,* 45 P. R. R. 647 (certiorari to review denial of delivery of estate to heirs, even where executors had become judicial administrators); *Pol v. Court,* 48 P. R. R. 366; *Emanuelli v. Court,* 49 P. R. R. 756; *Mendez v. Court,* 50 P. R. R. 671; *Ortiz v. Court,* 53 P. R. R. 38; *Santana v. Court,* 55 P. R. R. 419, 421; *Mercado Riera v. Mercado Riera,* 152 F. 2d 93-95; R. 924-928).

[35] Except in case of abuse, not shown herein, discretionary action is not reviewable (*Puerto Rico v. Rubert Hnos.,* 86 L. ed. 1081 mid., 1089, col. 2 top; *Barcelouz v. Buffen,* 51 F. 2d 82, 85; *Schram v. Poole,* 97 F. 2d 566, 570, col. 2 mid.).

ticularly set out in respondents' certiorari petition to the local Supreme Court, #1517 (R. 55-57; *ante,* pp. 16-19). And the said Supreme Court, among other things, correctly concluded that (R. 120 mid.):

> "In our judgment, the lower Court [Ponce district court] *exceeded its jurisdiction* when holding that the hereditary estate was under *custodia legis,* without any judicial administration having been decreed. * * *"

In Cases Nos. 1516 and 1518, separate petitions for certiorari were presented by these respondents to the Supreme Court of the Island, *to review questions as to the jurisdiction over their persons (in personam)* through lack of service on them, after charging that the District Court fell into serious and prejudicial errors of procedure for the reasons detailed in their respective petitions (R. 1, 9-10; 165, 170-174). The local Supreme Court also granted writs of certiorari in Nos. 1516 and 1518 (R. 12; 176-178), as it had done before when absence or improper service of process was involved (*Moore v. Dist. Court,* 59 P. R. R. 618), *or where, in pending cases, procedural errors appeared from non-appealable orders* (*Riviere Trustee v. Dist. Court,* 60 D. P. R. 732; *Rodríguez v. District Court,* 60 D. P. R. 919, Spanish editions). The insular Supreme Court finally set aside in Nos. 1516 and 1518, the order of the Trial Court of March 23 and 24, 1943, on the ground that service of process therein was improper and invalid (R. 120 bot.-121; 24; 181).

II.

Petitioner Porrata, as intervenor in Certiorari #1517, lacks the necessary reviewable interest. However, there was never absence of due process below (Petitioners' brief, Point III, pp. 39-61).

Porrata's alleged interest in Certiorari No. 1517, was and is insufficient to entitle him to any review herein.

The *petition for the surrender of the estate to the heirs* and the rendition of supplemental accounts *was directed solely against the ex-executor Mario Mercado Riera* (R. 348-358, 121, 920 mid.; 152 F. 2d 91, col. 1 mid.).

This was a special proceeding authorized by Sections 832 and 833 of the Puerto Rico Civil Code (ed. 1930), providing, in short, that upon expiration of an executorship's term, the incumbency concludes *ipso jure* even though not then completed; and that, in case the ex-executor refuses to return the estate or to render accounts, he may be ordered to do so by a court of justice (local Supreme Court's decision, R. 114).

Petitioner Mario Mercado Riera, the ex-executor, answered on the merits averring, among other matters, that with respect to the delivery of the properties to the co-heirs, "he has always been willing and ready to do it," but on condition that there should first be executed a draft of partition by Porrata as testamentary partitioner, etc. (R. 363, 49 mid.).

As will be observed, petitioner Mario Mercado Riera raised in the District Court of Ponce and then urged in the local Supreme Court, the question relating to Porrata's alleged draft of partition under the compromise agreement, praying that the writ issued be quashed, with any "other pronouncements that" the Supreme Court below "may deem pertinent" (R. 65-66, 363).

Ex-commissioner *Porrata did not possess the hereditary assets.* Hence, he did not have either to surrender them or to render any accounts to the heirs. That, he conceded to be the factual situation in the local Supreme Court, and Porrata himself stated that he did not entertain "any objection whatsoever to have" the properties "administered * * * by the four co-heirs, as provided by the judgment" of the insular Supreme Court (R. 141 mid; Sub-Appendix A-II, pp. 114-116). That is why the proceeding for the surrender of the estate to the heirs *was not directed against Porrata, since he was not a necessary party;*[36] and obviously for those reasons Porrata himself chose not to intervene in that proceeding (surrender of estate) in the Ponce District Court under *Section 72* of the Puerto Rico Code of Civil Procedure, ed. 1933, notwithstanding he well knew of its pendency.[37]

Whenever Porrata felt he had a real interest in any pending proceeding, he promptly sought intervention under the provisions of the Code of Civil Procedure (Sec. 72, *supra*).

(a) For instance, when no inventory of the assets and liabilities of the estate were extrajudicially available from the then executor, whom respondents thought was the one primarily bound to furnish it, co-heir Adrián Mercado Riera brought a special proceeding allowed by the insular Civil Code, ed. 1930, Sections 964 to 988. Under those provisions of the Civil Code, any heir has the absolute right to accept an inheritance on benefit of inventory by requesting also that the *preparation of an inventory* be judicially compelled. Through such proceeding ₱1213, an order was secured from the Ponce District

[36] See footnote 13.

[37] Ponce District Court's journal entry of November 17, 1941, shows that during hearing of case for delivery of estate to heirs Attorney Molina for the ex-executor, left courtroom for San Juan, and then, "upon the request of attorney Pedro M. Porrata," hearing was continued to November 21, 1941 (R. 365 bot., 366).

Court requiring Mario Mercado Riera, now co-petitioner, to bring into court a statement of assets and liabilities of decedent permitting the formulation of an inventory that might apprise the heirs as to the real status of the estate (R. 100, 774, 780). In this proceeding, petitioner Porrata saw fit to intervene by claiming that he, not the executor, had the exclusive right to prepare such inventory (R. 916 bot.). His contention was denied and a writ of certiorari issued at his instance was promptly quashed and the order of the Ponce District Court requiring the then executor to supply the inventory was upheld (see *Porrata v. District Court*, 53 P. R. R. 141, 142 mid., 147 bot., 148; 152 F. 2d 89, col. 2; R. 917). It thus appears that Porrata's intervention in ‡1213 became obstructive as entailing unnecessary outlay and protraction. He did nothing towards framing an inventory or to speed up hereditary matters, during his incumbency up to September, 1939, or otherwise (R. 116, 119). Appropos of this, the insular Supreme Court, upon April 29, 1938, entered this admonition: "The commissioner should, to avoid expense and a duplication of inventories, join in the proceedings wherein, at his own request, he was allowed to intervene" (R. 856, 863; 53 P. R. R. 140, 148).

(b) A new attempt by petitioner Porrata to intervene in another special proceeding in the Ponce District Court, may be seen at pages 213-215 of the Record. There he again intended to deny the then executor (1938) power to go into the preparation of an inventory, *after admitting that the latter had "not requested a judicial administration of the estate and that none of the parties interested in the executorship of the testator have asked judicial intervention"* and that *"the testamentary executor only* has the powers enumerated in articles 824 and 825 of the Civil Code" (R. 214). This additional obstructive interference and application by ex-commissioner Porrata was

denied by the Ponce District Court (R. 218 bot.). In the interest of brevity, appellees now invite attention to what has been already stated herein (*supra*, pp. 29-39) respecting the various and independent proceedings concerning decedent's estate, *including that for the purported approval of the so-called ex-commissioner's report.*

When review by certiorari was granted by the insular Supreme Court in case No. 1517, *Porrata elected to intervene* in the manner already explained herein (*ante*, pp. 19-20). He asked the Supreme Court to quash the writ of certiorari issued *"with any other proper pronouncements"* (R. 67-69). *In his answer to the said certiorari petition, Porrata virtually raised* (R. 83-96) *the same questions on the merits which had been urged by the ex-executor* (R. 65, 363). As such intervenor, Porrata submitted to the jurisdiction of the Supreme Court of Puerto Rico, accepted the case and its return on certiorari as it stood, and could not urge dismissal of the proceeding.[38] July 14, 1943, the local *Supreme Court entered its judgment*, vacating the order of the Ponce District Court in No. 1517, and *ordered only* the ex-executor, *Mario Mercado Riera, petitioner on this record, to deliver the estate to the heirs and to render them supplemental accounts* (R. 121; petitioners' brief, p. 50 top).

As above indicated, petitioner Porrata, the ex-commissioner for partition, stated under oath in the Supreme Court that he *did not have "any of the properties of the estate in his possession" and had no objection whatsoever "to have them administered by * * * the four co-heirs, as provided by the judgment of this Supreme Court"* (R. 141 mid.). Moreover, the said judgment of the local Supreme Court in Certiorari No. 1517, *in no manner requires or directs petitioner Porrata to do anything; it expressly concerns petitioner Mario Mercado*

[38] See footnote 17 and cases (*ante*, p. 20).

Riera, who withheld the estate from the heirs after the expiration of the executorship and who was by law bound to render them the usual accounts. Therefore, it is no wonder that, *though Porrata is apparently asking for review of the judgment in No. 1517* (R. 121), as affirmed by the Court of Appeals, he is practically relying on certain EXCERPTS IN THE OPINION rendered by the Supreme Court of Puerto Rico.[39] Those findings the local Appellate Court was required to make upon the issues raised by intervenor Mario Mercado Riera (R. 65-66, 363), now petitioner, who also urged for consideration the matter concerning the alleged draft of partition. That is why respondents have stated before (*ante,* p. 37) that the responsive action of the local Supreme Court in passing upon the questions submitted, not simply as involved in the case, *but at the further invitation of Porrata himself,* was not only correct, but produced a result as to which appellant Porrata cannot speculate or complain.[40]

In fact, petitioner Mercado's brief in the Court of Appeals (p. 13 bot.), signed by Porrata, too, as one of his attorneys, expressly recognized that:

> "In 1517, *as to appellant Porrata, the effect of the judgment appealed from is to leave him without judicial approval of payments made to him* by the executor, including, *inter alia, $20,000 for his services as* auditor-*partitioner* of the estate, and subject to an unadjudicated claim of personal liability for refund thereof to the heirs." (Italics ours.)

[39] Court's opinion does not constitute the Court's judgment, from which appeal must be taken, as rights of parties are adjudged solely by decretal portion of decree, and it is only such portion of the final judgment from which appeal would lie (*McGhee v. Leitner,* 41 F. Supp. 674, 675; *Certain, etc., Corp. v. Wallinger,* 89 F. 2d 427, 429, col. 2; *Herb v. Pitcairn* (1945), 89 L. ed. (Adv. Ops. pp. 481, 486).

[40] See footnote 28 and cases.

But that judicial approval is to be sought, conformably to the compromise agreement of the coheirs (R. 542 bot., 102 mid., 931 mid.), through the rendition of final or supplemental accounts to the heirs and if objected to, by submittal of the accounts and objections to a competent court for decision. *The so-called judicial approval is not in issue*[41] on this record, and *in no way concerns Porrata. It is a matter exclusively between the ex-executor and the coheirs.* It should also be noted that the alleged $20,000 fee *was paid to Porrata* by the ex-executor on November 17, 1941, which amount he evidently received without then caring for any "judicial approval" (see petitioners' brief, p. 52, lines 8-20). The original entry of such payment to Porrata appears in quarterly supplemental accounts (October 24, 1941 to January 31, 1942), extrajudicially rendered by the ex-executor to his coheirs Adrián, María-Luisa and Margarita Mercado Riera, which were included in the "*Final Supplemental Accounts* from March 5, 1940 to August 31, 1943," served by petitioner Mario Mercado Riera on his coheirs the 9th of September, 1943 (see Sub-Appendix A-1).

The foregoing plainly shows that appellant *Porrata's sole interest, as an intervenor in No. 1517, is in the effect of the decision* therein as a precedent in possible future litigation among the coheirs, *concerning the new final supplemental accounts from March 5, 1940 to August 31, 1943.*

That is why the Circuit Court of Appeals, as to petitioner Porrata, held that (R. 931-932):

> "His presence here is not easy to understand. In the first place *it does not appear that he has*

[41] Points not involved or raised below cannot be urged on appeal (*Supreme Forest, etc., v. City of Belton*, 100 F. 2d 655; *Mauro v. Rodríguez* (P. R.), 135 F. 2d 555, col. 1 mid.; *Helvering v. Tex-Penn. Oil Co.*, 81 L. ed. 755, 766, col. 2 mid.; *Helvering v. Minn. Tea Co.*, 80 L. ed. 284.

any financial interest in any phase of the litigation before us on these appeals. His fee was agreed upon in the contract of compromise, and the appellees say in their brief and *Porrata admitted in argument before us, that this fee has been paid in full.* **Furthermore, if there is any question of fees in** the background, *the accounting proceeding, not this, would be the appropriate place to settle it.*

"In the second place *Porrata is not officially affected by the judgments* rendered by the court below. • • •

"Apparently, however, *Porrata's concern is not so much with the judgments of the court below as with statements in the opinion.* • • •

"• • • *But the short answer to Porrata is that* only final decisions of the Supreme Court of Puerto Rico are reviewable by us on appeal (§128 of the Judicial Code: 28 U. S. C. §225) and *the final decisions of the court below are embodied in its judgments, not in its opinion, and its judgments as we have shown, do not affect Porrata.* His fear **that the above statements may be used against** him in future independent litigation • • • *does not give him standing to appeal. Boston Tow Boat Co. v. United States,* 321 U. S. 632."

Mercado Riera v. Mercado Riera, 152 F. 2d 87, 96, col. 2, bot., 97.

In the *Boston Tow Boat Co. case, supra,* this Court recently dismissed an appeal, after holding that an intervenor *whose only interest is in the effect of the decision* as a precedent in similar litigation by which it is directly affected, has no such an independent right which is violated by the decision, as to entitle intervenor to take a separate appeal. *Boston Tow Boat Co. v. U. S.,* 88 L. ed. 975, 997, 321 U. S. 632.

And even for purposes of determining the jurisdictional amount in appellate proceedings, *only claims directly in issue,* and not incidental or collateral matters, as those raised by petitioner Porrata, may be considered.[42]

III.

No federal question was properly raised in, or ever passed upon by, the insular Supreme Court below. Hence, none should be reviewed here. Yet, petitioners were amply heard (Petitioners' brief, Points I, III).

In cases #1516 and #1518, petitioner Mario expressly recognized and invoked the Supreme Court's jurisdiction to pass upon the merits of the controversies, *without raising any constitutional or other federal point* (R. 17-18, 179-180).

As respects the petition lodged by respondents in the Ponce District Court for the surrender of the estate to the heirs and rendition of supplemental final accounts (R. 49, 98 mid., 348-358), petitioner Mario Mercado Riera, the ex-executor, answered on the merits to the petition for surrender of assets without urging any constitutional or other question of a federal character *in the court of first instance* (R. 49 mid., 105-106, 363). When the local Supreme Court granted review by *certiorari in No. 1517* (R. 59), petitioner Mario Mercado Riera, after securing leave to intervene, filed his intervention and moved that the writ issued be set aside on practically the same grounds which he had raised in his answer before the Ponce District Court, and prayed for any "*other pro-*

[42] 4 *C. J. S.*, Sec. 80, pp. 170, 171; *Abadie v. U. S.*, 149 U. S. 261, 37 L. ed. 723; *Cameron v. U. S.*, 36 L. ed. 1077, 1078, col. 2; *Opelika City v. Daniel*, 109 U. S. 108, 27 L ed. 873; *New England, etc., Co. v. Gay*, 145 U. S. 123, 130, 36 L. ed. 646, 648, col. 2.

nouncements that" the insular Supreme Court *"may deem pertinent"* (R. 65, 66, 363). Therefore, the ex-executor did not object to the P. R. Supreme Court's jurisdiction, *nor did he raise any federal question at all.*

Petitioner Porrata, the ex-commissioner for partition, though with knowledge (R. 365 bot., 366) of proceeding for the return of the estate to the heirs, in the Ponce Court, *did not choose to intervene therein under Section 72, Puerto Rico Code of Civil Procedure, ed. 1933,* if he felt in any way interested in the case, *plainly because such proceeding was not directed against Porrata,* but only against the ex-executor Mario Mercado Riera (R. 98 mid., 358 bot.)[43] Had Porrata kept out of *Certiorari No. 1517* in the local Supreme Court, *as undoubtedly he could have done,* no complaint from him would be forthcoming now, as he would have been a stranger to the proceeding. *Carreras v. Brunet,* 47 P. R. R. 420; *Fed. Land Bank of Baltimore v. Court,* 45 P. R. R. 201 mid.; *King v. Fernández,* 30 P. R. R. 558 near bot.

But Porrata, having advised that there had been no service on him of certiorari petition (#1517) for the return of the estate, such service was made on April 22, 1943 (R. 62, 63). However, even one who has the right to intervene is under no obligation nor can he be compelled to do so. *Interventions are in there voluntary. Adler v. Seaman,* 266 Fed. Rep. 828, 829; *Bennett v. Kiber,* 76 Tex. 385, 13 S. W. 220; *Leaver v. K. & L. Box and Lumber Co.,* 6 F. 2d 666, 667, col. 1 bot. Notwithstanding, then Porrata filed in the insular Supreme Court a so-called special appearance[44] substantially setting forth that for the Court to pass on questions concerning the commissioner's alleged duties and functions as such, he should

[43] See footnotes and cases at pp. 14-15, *ante.*

[44] See footnote 16 (*ante,* p. 19).

be heard, as that would affect rights pertaining to his office without due process, in alleged violations of the Organic Act and the federal Constitution, without specifying the legal provisions thereof supposedly involved. Thereupon, Porrata prayed that the writ of certiorari issued be quashed *"with any other proper pronouncements"* (R. 67-69). But, concomitantly (May 24, 1943), *Porrata lodged an answer to the certiorari petition, in the territorial Supreme Court, joining issue on the merits and urging practically the same points or objections which had been raised by the ex-executor Mario Mercado Riera* (R. 83-96, 65).

The printed record thus positively shows that ex-commissioner Porrata, co-petitioner here, by his voluntary intervention[45] in the insular Supreme Court, also accepted and invoked its jurisdiction and powers on the merits (R. 83-96), to set aside the writ of review issued and to enter *"any other proper pronouncements"* (R. 69), *thus inviting action and rulings by the local Supreme Court,*[46] *with jurisdiction over the parties and the subject-matter. Porrata further argued his case at the hearing before the insular Supreme Court through counsel* (R. 96 bot.). In this connection, the Court of Appeals found that petitioner Porrata was "allowed to intervene" and *"filed an answer* to the petition for certiorari" in the territorial Supreme Court, "and also" a brief in support thereof, "and his counsel was heard orally" (R. 921 mid.; 152 F. 2d 91, col. 2 bot.). Hence, *it is undeniable that petitioner Porrata was amply heard in all respects.* That is sufficient reason, in addition to what has already been stated, why the cases of *Coe v. Armour Fertilizer Works*, 59 L. ed. 1027, 1032, and *Saunders v. Shaw*, 61 L. ed. 1163, cited in petitioners' brief, pp. 57, 59, are not

[45] See footnote 17 (*ante*, p. 20).

[46] See footnote 28 (*ante*, p. 39).

analogous nor applicable here. In neither of those cases are there facts and circumstances such as those existing in certiorari proceeding No. 1517 herein, where *Porrata, through his own voluntary intervention in the local Supreme Court, was accorded full hearing and argument, though he never had been a necessary party in the court of first instance, because the proceeding was not directed nor was judgment demanded against him* (*supra*, p. 29).

Petitioner said below that the matter of the insular Supreme Court's jurisdiction to grant certiorari was raised in the answer of Porrata to the certiorari petition in case No. 1517. But even a superficial examination of such answer, paragraphs 20 and 21, will show Porrata's assertion to have been that the *District Court of Ponce had jurisdiction* in the matter. *In no part of Porrata's answer, is to be found any challenge against the local Supreme Court's jurisdiction in certiorari proceeding No. 1517* (R. 83-94). To the contrary, Porrata prayed that the writ of certiorari allowed by the P. R. Supreme Court be quashed *"with any other proper pronouncements"* (R. 69 top). Through his voluntary appearance and intervention in the Supreme Court below petitioner Porrata submitted to its jurisdiction, which clearly existed under the local Certiorari Act of 1904 (*ante*, pp. 19, 43). As then intervenor, Porrata also accepted the case as it stood, and was precluded from urging dismissal of the proceeding.[47] The insular Supreme Court, having complete jurisdiction over the subject-matter and all the parties, duly entered its judgments.

The foregoing considerations exhibit that the so-called "constitutional or federal questions" in the local Supreme Court, alluded to by petitioners, are really fantastic.

In fact, petitioners' pleadings in Puerto Rico, as above indicated, did not even refer to *Section 40* of the *Organic*

[47] See cases and footnote 28 (p. 39, *ante*).

Act of Puerto Rico (1917), nor to *Section 33* of the earlier Organic Act of 1900 (*Foraker Act*), *nor to General Order No. 118* of the Military Government of Puerto Rico.

That is why, among other reasons, the insular Supreme Court did not, and could not have passed upon any such imaginary federal questions as petitioners insist on here. And, naturally, if no provision of the Organic Act of Puerto Rico was considered or determined by the territorial Supreme Court below, *it follows that no federal questions should be considered now, much less as of a substantial character*, on which jurisdiction here could be predicated.[48]

Remington Paper Co. v. Watson, 43 L. ed. 762, 765, col. 1. mid., was a case where it was objected that the record presented no federal question. This high Court said:

> "The action was regularly proceeded with, and was determined against plaintiff in error on grounds which did not involve Federal questions, and therefore *it is not within our power to review the judgment of the supreme court of the state.*
>
> "The plaintiff in error thus sought in the state court and was given opportunity to litigate the rights claimed by it and it cannot complain that the guarantees of the Constitution of the United States were denied because the litigation did not result successfully. • • •
>
> "It follows that this writ of error cannot be mantained."

For that and other reasons, respondents have moved for dismissal of the petition for certiorari herein (see Appendix A).

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[48] *Succ'n of Tristani v. Colón* (P. R.), 71 F. 2d 374; *Martinez v. Sancho* (P. R.), 108 F. 2d 960, 961; *Stewart v. Kansas City*, 60 L. ed. 120; *Fleming v. Fleming*, 68 L. ed. 547, 549, col. 2; *Kammerer v. Kroeger*, 81 L. ed. 254, 255; *South Bell Tel. Co. v. Okla.*, 82 L. ed. 752, 755; *Patterson v. Gas Co.*, 83 L. ed. 231, 233.

In these cases, appeals were dismissed for lack of appellate jurisdiction or as not raising substantial federal questions.

IV.

The insular Supreme Court had jurisdiction on certiorari to review proceedings in Nos. 1516, 1517 and 1518, and to affirm or vacate and grant appropriate relief (Petitioners' brief, pp. 33-39).

In their supporting brief (Point II), petitioners state that, on certiorari, the local Supreme Court "had no power to go further than to vacate" the orders reviewed. In support of that ungrounded assertion, reference is made to *National Surety Company v. Rossy* (1913), 19 P. R. R. 897. In that case, the only question directly involved and decided was that the overruling of a motion for removal of a cause to the federal court, did not amount to an infraction of any law of procedure and that, therefore, the Certiorari Act of 1904 could not be invoked. There was no occasion for granting any other relief there, as the order under review was not vacated but, on the contrary, the writ issued was quashed. Hence, any other statement therein is mere *dictum*.

This particular point and, in fact, none concerning the local Supreme Court's powers, was ever raised in the Puerto Rico Supreme Court (*ante*, p. 18).[49] Even if it had been so urged there, it could not be reviewed here for lack of appellate jurisdiction (see Appendix A). Though petitioner Porrata announced his intention to move for a reconsideration in ₱1517 (R. 122), and certain time was allowed him therefor (R. 123), no rehearing was asked either by him or by petitioner Mercado in the local appellate tribunal. It was only in certiorari ₱1516 (claim for alleged fees), that a rehearing was applied for by Ochoteco and Zapater (R. 33)—not appellants here—

[49] Point not raised in lower court cannot be urged as error on appeal (*Baetjer v. U. S.*, 143 F. 2d 392, 397, and see other cases in footnote 41) *ante*, p. 52.

which motion was denied by the insular Supreme Court. And even there, the Court's power, in its discretion, to order delivery of the estate to the heirs (Case No. 1517), was not questioned (R. 33, 36-37).

The wide latitude and discretion with which the insular Supreme Court is vested by the local Certiorari Act of 1904, has already been considered herein (*supra,* 41-46). It has also been shown (*ante,* pp. 16-19; 21, 39) that, under the territorial Certiorari Law of 1904, the Court is empowered to *complete proceedings when a Trial Court refuses to do so upon erroneous grounds;* and, evidently, that is the usual and only course to follow when, as here, the parties have united in presenting to the Supreme Court below, with jurisdiction over the case and parties, all questions thought to arise upon the record, particularly when the litigation already has covered a considerable period[50] and all facts and evidence, almost wholly documentary, were sent up to the reviewing Court as part of the return (R. 59, 187-189).

As a matter of local practice and procedure, upon vacation of an order reviewed by certiorari, the insular Supreme Court is empowered, under the Certiorari Act of 1904 (Art. 670, Code of Civil Procedure, ed. 1933), to complete proceedings by granting appropriate relief. This has often been done, in the exercise of its sound discretion, by the local Supreme Court.[51]

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[50] See *Cole v. Ralph,* 64 L. ed. 567, 574, col. 2 mid., where the U. S. Supreme Court states that, on certiorari, "it may proceed itself to a complete decision."

[51] *Padilla v. Justice of Peace,* 35 P. R. R. 276, 282 top (judgment on certiorari modified and affirmed on appeal). Among other cases, see: *Santana v. Court,* 55 P. R. R. 419, 421 mid. (order vacated and a new one made); *Mercado v. Corte,* 62 D. P. R. 369 mid., 391 (judgments vacated and relief granted); and see *Ballester v. Tribunal de Apelaciones,* 61 D. P. R. 475, 512, Spanish edition (relief by modifying judgment), and *Buscaglia v. District Court, etc.* (C. C. A., 1st

The obviousness of this point prompted the Court of Appeals to state that: "Clearly this statute [local certiorari act] gives the Supreme Court of Puerto Rico jurisdiction * * * in certiorari to order the inferior court to complete proceedings when it refuses to do so upon erroneous grounds"; and further that the higher court in Puerto Rico "clearly has jurisdiction," "upon reversal on certiorari, in a proper case to order entry of a new order * * *" (R. 924 bot., 925 bot.). *Mercado Riera v. Mercado Riera,* 152 F. 2d 93 mid. (footnone 8). Whether final appropriate relief is given by an appellate court, or on remand by a Trial Court, is immaterial as in either case the litigation is finally terminated between the parties on the merits, leaving, in any event, nothing for the Trial Court to do but the ministerial act of following the higher court's instructions. *Buscaglia v. District Court,* 145 F. 2d 275, 282, col. 1 mid.; *Chesapeake and Potomac Tel. Co. v. Manning,* 46 L. ed. 1114, 1146; *Gulf Ref. Co. v. U. S.,* 70 L. ed. 196.

And, of course, the action of the Supreme Court of Puerto Rico in disposing of the case as it did in Certiorari No. 1517 (R. 121), when the questions, parties and all the evidence were before it, was a discretionary matter of purely local law, which should always be accorded the greatest weight (*Diaz v. Lugo,* 67 L. ed. 550, 552; *P. R. v. Rubert Hnos.,* 86 L. ed 1081, 1088, col. 2 mid.; *De Castro v. Board of Commissioners,* 88 L. ed. 1384, and see other cases cited *ante,* footnote 18).

Cir.), decided October 24, 1944, 145 F. 2d 275, 282 (where Puerto Rico Supreme Court, under 1943 Certiorari Act, gave relief *by restoring* District Court's restraining order and remanding case, which was construed here, on appeal, as finally terminating litigation on merits); *Bd., etc., v. State Bd.,* 1 Cal. 2d 784, 37 P. 2d 84, 96 A. L. R. 775 (Court, having all facts before it, may give appropriate relief).

V.

Concise response to some other minor questions of local law.

A. *The Ponce District Court overreached its powers in holding that decedent's estate was in custodia legis "without any judicial administration having been decreed."*

Petitioners hesitatingly, though argumentatively and quite erroneously, intimate (Br. p. 38 mid.), that the local Supreme Court suggested the District Court of Ponce was "without jurisdiction" over the Mercado estate. This amazing statement is without warrant on this record. It is likely due to misinformation regarding Puerto Rican law and procedure. Otherwise, the statement would be inconceivable. A careful reading of the decision of the Supreme Court of Puerto Rico in No. 1517, demonstrates that the finding as to *absence of a judicial administration* was that:

> "• • • Neither within the proceeding regarding letters testamentary nor within the beneficiary acceptance proceeding did the estate of Mario Mercado Montalvo ever become a judicial administration, and, as the executorship had expired, it devolves upon the heirs to execute the will of the testator regarding any particular where the executor has failed to act.
>
> "In our judgment, the lower court *exceeded its jurisdiction,* when holding that the hereditary estate was under custodia legis, without any judicial administration having been decreed • • •" (R. 104 bot., 120 mid.).

This, of course, meant that the Ponce District Court procedurally overreached its powers in attempting to exercise general jurisdiction over the whole estate, as if

it were in *custodia legis* or under a judicial administration in one single testamentary case, when the fact was and is—and the contrary is not even contended by petitioner here—that *no judicial administration had ever been sought or decreed* concerning the Mercado estate. Under such circumstances, according to Puerto Rican law and procedure, a testamentary executorship is regarded as one of an *extra-judicial* nature, *without court intervention or custodia legis over the estate,* except regarding such separate and independent actions or proceedings which may arise and are provided for by the local civil or procedural code. This is so plain that even petitioners here have felt constrained so to acknowledge in their brief, p. 36 top, where it is conceded that under the circumstances pointed out, "the only available remedy would be by the *institution of independent actions* at law by creditors or others interested in the properties; *or by one or more of the heirs against the others if they could not wholly agree among themselves* (Italics ours). That is why respondents have hereinbefore set out the various and separate judicial proceedings instituted concerning decedent's estate, showing the legal source, grounds, aims and conclusions of each matter (*ante,* 28-37). Naturally, the independent purpose and character of each proceeding cannot in any way be affected under local practice, by the title or caption in the petition, including its filing number, whose object is to facilitate identification, as the facts stated in complaints, not their captions, determine the nature of the action or proceeding. See 49 C. J. 130; *The Juncos Central Co. v. Rodríguez,* 16 P. R. R. 286, 292; *Rodríguez v. The San Juan Fruit Co.,* 60 D. P. R. 437, Spanish edition.

Co-petitioner Porrata also admits that testator provided in his will "everything that is necessary for an *extraju-*

dicial liquidation," "which always is beneficial to the heirs, legatees and creditors of the estate" (R. 799 near bot.).

Petitioners even conceded, in their Statement on Appeal below (p. 31 mid.)[52] that if this were properly to be considered as a private independent Civil Law executorship, to be carried on under the testator's will, then there appears to be "SUBSTANTIAL CIVIL LAW AUTHORITY IN THE DECISIONS OF THE SUPREME COURT OF SPAIN AND IN THE WORKS OF THE COMMENTATORS OF THE SPANISH CIVIL CODE, FOR HOLDING, AS THE INSULAR SUPREME COURT DOES, THAT THE EXECUTOR'S TERM OF OFFICE ACTUALLY EXPIRED OF SEPTEMBER 2, 1939, TWO YEARS AFTER HE FIRST TOOK OFFICE, DESPITE THE TESTATOR'S EXPRESS DIRECTION IN THE WILL THAT THE ONE-YEAR TERM GRANTED HIM BY SECTION 826 OF THE CIVIL CODE FOR EXECUTING HIS OFFICE SHALL BE EXTENDED FOR 'ALL THE TIME THAT MAY BE NECESSARY.'" (Emphasis supplied.)

And, as to Certiorari No. 1517, the Supreme Court of Puerto Rico clearly explains that due to Sections 832 and 833 of the local Civil Code, ed. 1930, it was necessary, when the executorship expired and there was refusal to return the estate to their heirs, to judicially compel the ex-executor so to do, as upon the expiration of the incumbency, "the execution of the will of the testator shall devolve upon the heirs" in case anything remains to be done (R. 114, 120 mid.). And the petition for surrender of the estate to the co-owners, arising under Sections 832 and 833 of the insular Civil Code, ed. 1930, as the local Supreme Court held, initiated a special proceeding, separate and complete *per se,* from the petition down to final judgment in the Ponce district tribunal, with subsequent review by certiorari in the local Supreme

[52] This has been additionally certified to supplement the record here, by the Clerk of the Court of Appeals.

Court (*ante,* 12-21) and affirmance by the Court of Appeals (152 F. 2d 86).

B. *District courts in Puerto Rico are not divided into probate and civil sides.*

Petitioners' brief, p. 45 bot., states that Puerto Rican courts have general jurisdiction "over surrogate proceedings."

At the threshold, this statement must be clarified. The District Courts in Puerto Rico are courts of general civil jurisdiction (*Oronoz v. Román,* 26 P. R. R. 22, 26; *Coll v. Rigo,* 16 P. R. R. 562); and, as in Louisiana, also a civil law state, courts are not divided into probate and civil sides (see *Succ'n of Kelley,* 102 So. 678, 157 La. 585).

C. *Meaning of "perfecting" (formalizar) the so-called "draft of partition," within the compromise agreement.*

Petitioners say (Br. 47 bot.) that the local Supreme Court instead of using the word "*prepare*" adopted the word "*perfect*" in connection with the draft of partition (R. 103, last par.), which petitioners insinuate is not warranted. The fallacy of this position is obvious. It cannot be gainsaid that the Spanish text of the compromise contract, clause 3, paragraph (m), insofar as now pertinent, reads "Dicho Don Pedro M. Porrata • • • se compromete a *tener formalizado* el aludido cuaderno particional • • •." The Supreme Court below considered the compromise agreement as originally written by the parties, *i.e.,* in Spanish, and in referring to said paragraph (m), simply used the word "*formalizado*" (*Mercado v. Corte,* 62 D. P. R. 375 bot., Spanish edition). Now, the word "*formalizado*" appears translated in the record as "prepared" (R. 545, line 4). The difference between the Spanish words "preparar" and "formalizar," is that the latter implies something more complete

or perfect. For instance, in the *New Velázquez Dictionary*, 1st. ed., Spanish-English (p. 326), the word "*formalizar,*" used by the parties in the compromise agreement and considered by the Island's Supreme Court, is thus defined: "*to form or make complete or perfect.*" The *Enciclopedia Juridica Española* (Vol. XVI, p. 502) informs that "*formalizar*" is to give the last shape to something or to surround it with legal requirements ("dar la última forma a alguna cosa o revestirla de los requisitos legales"). Therefore, it is clear that whether the word "prepare" or "perfect" is employed in English, it is immaterial on this record, as the insular Supreme Court, in its decision, used and considered the words "*tener formalizado,*" which the parties themselves inserted in the original Spanish text of the aforesaid compromise agreement.

D. *Time allowed Porrata to present a partition deed under the compromise contract.*

Petitioners also refer (Br. p. 41) to clause (m) of the compromise agreement which required Porrata to have furnished the coheirs with a final draft of partition deed "*within a term of 10 days from the payment of inheritance tax.*" Of course, the words "*inheritance tax*" only referred to the Puerto Rican estate tax. That is so, not only because of the expression "inheritance tax" in singular, but further because the federal estate tax is inapplicable to Puerto Rico estates under the explicit enactment of *Section 9, Organic Act* of 1917, providing that the statutory laws of the United States not locally inapplicable, shall extend to Puerto Rico, *except the internal revenue laws.*[53]

[53] In *Piacentini v. Buscaglia*, 59 D. P. R. 782 mid., Spanish text, it 's also said that the federal estate tax is inapplicable to Puerto Rico. However, this part of the opinion has been inadvertently omitted from the English text in 59 P. R. R. 777 mid.

On this minor point, the Circuit Court of Appeals stated:

> "It appears that the executor did not file any notice of decease with the insular taxing authorities until May 3, 1939, although under the tax law he is allowed only 180 days in which to do so, and an inheritance tax receipt dated March 9, 1940, shows that he did not pay the inheritance tax until February 29, 1940" (R. 919 bot.; 152 F. 2d 91, col. 1 top).

Moreover, in passing on the ex-executor's accounts to the heirs, a different and separate proceeding which appellees set out *supra*, pp. 31-34, Judge Sepúlveda of the Ponce District Court, upon February 19, 1942, rendered a decision. There, Judge Sepúlveda held that the federal tax controversy did not prevent in any way the use of monies possessed in Puerto Rico, as the "transfer certificate (Exhibits Nos. 42 and 43) from the Federal Internal Revenue Bureau shows that the only sum which was not available to the estate, by reason of the Federal tax controversy, was the sum of $200,000 located in the City of New York, U. S. which were deposited in the National City Bank, and which were not available unless a release or transfer certificate were previously obtained from the Government. Therefore, the Court is of the opinion and so orders, that the sum of $2,102.98 of unnecessary interest paid by the executor on the first installment of aforesaid testamentary legacies, should be transferred to the assets of aforesaid final account" (R. 406, pars. 3 and 4). Even the ex-executor, now petitioner in his answer to the objections urged against his final accounts to March 4, 1940, admitted that the Federal Internal Revenue Bureau decisions on the so-called federal tax controversies, was "favorable to the estate" (R. 281, line 12), that is, that the federal estate tax, as part of the U. S. Internal Revenue Code, was not ap-

plicable to Puerto Rico in view of Organic Act (1917), Section 9 above referred to.

Under Act No. 99, on insular inheritance tax, *Section 5* (Laws of 1925, p. 795, as amended by Act No. 34, of July 22, 1935, Extra Session Laws 1935, p. 423), it was the duty of every executor to transmit to the Treasurer of Puerto Rico, *within 60 days after the decedent's death* (testator's death occurred August 22, 1937), "a sworn notification of the death of said decedent, stating plainly: * * * as nearly as possible, the amount, valuation, description and location of the estate of the decedent," etc.; and any executor failing to file such notification within the period specified, "shall be deemed guilty of misdemeanor * * *."

Section 9 of that local inheritance tax act, as amended April 27, 1933 (Laws of 1933, p. 234), grants 180 days of grace from decedent's death, before interest at 1% per month accrues on any estate tax due. And Judge Sepúlveda, then of the Ponce District Court, in his decisions on the accounts, further held that the Treasurer of Puerto Rico collected $26,904.58 of interest on the local inheritance tax on the Mercado estate, due to the fact that the 180 days of grace granted by law, expired counting from the death of testator on August 22, 1937, that is, for a period of two years and 11 days during which Mario Mercado Riera "failed to file his notification of decease of the testator and to pay the corresponding inheritance tax" (R. 146 mid.).

When the compromise agreement was executed on September 9, 1938, in view of the then executor's failure in that respect, in contravention of the cited provisions of local law, the co-heirs agreed with the then (1938) executor, now petitioner Mario Mercado Riera, upon a short term of 10 days from the date of the compromise contract, for him to comply with his legal duty to serve

notice of death (local estate tax return) of testator upon the Treasurer of Puerto Rico; and on liquidation thereof, to pay the inheritance tax (R. 543 mid., 102 bot.; *ante*, p. 10). In the independent litigation regarding the accounts, rendered by petitioner Mario Mercado Riera as alleged "executor" (R. 234), not as "judicial administrator," Judge Sepúlveda also dismissed an alleged excuse urged by the ex-executor for not complying with the compromise contract on that point and ordered him to make restitution to appellees of $13,452.29, as interest tardily and improperly paid for their account regarding the local inheritance tax (R. 416-418 mid.; see *supra*, p. 35).

That is one of the reasons why co-petitioner Porrata, *as* (1938) *testamentary partitioner* (R. 527 mid., 545), accepted and agreed to prepare or perfect (*formalizar*) a draft of partition "*within a term of 10 days*[54] *from the payment* of inheritance tax in this case and *in accordance with the provisions of the present contract,*[55] which cannot be altered except with respect to the description of the properties or goods of the estate, nor modified, added to or amplified in any manner whatsoever * * *" (R. 545, 103 bot.).

As just stated, the compromise agreement obligated Porrata, as then (1938) commissioner for partition, to have prepared or perfected the draft of partition to be executed by him and the co-heirs, *within a term of 10 days from the payment* of the inheritance tax (R. 527,

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[54] As a matter of law, time is of essence of contracts (particularly in view of the short and precise terms fixed in the compromise agreement, etc.) (*McFaddin Rice Milling Co. v. Maldonado*, 31 P. R. R. 450, 456 mid., par. 2; *Meier Dental Mfg. Co. v. Smith*, 237 Fed. Rep. 568 top; *Owen v. Giles*, 157 Fed. Rep. 825, 829; *Emerson v. Slater*, 16 L. ed. 360).

[55] Mario Mercado Riera, too, thought it necessary to make "forma demand" upon ex-commissioner Porrata for him to proceed to the partition of the estate "in conformity with aforesaid contract of compromise of September 9, 1938" (R. 593 mid.).

545, line 5). This also appears from petitioners' brief (p. 41), where the unwarranted impression is given that the 10 days should be counted from March 9, 1940, which was merely the date of the tax receipt (R. 583). But the authentic tax receipt itself, undoubtedly shows that the inheritance tax was *"paid February 29, 1940"* (R. 583 near bot., line 25). This is also admitted by the ex-executor (R. 276 bot., par. B), and it is further so recognized in the opinion by Judge Sepúlveda on the accounts, included in the record by petitioners (R. 416, par. 4). The testamentary offices of executor and partitioner expired on September, 1939, as held by the local Supreme Court, affirmed by the Court of Appeals (R. 112, 115). But even if the contrary be assumed, the proposed draft of partition was extemporaneously[56] sent to the heirs by the ex-partitioner on or after March 14, 1940 (R. 597 bot., 598, 603, 604 bot.). In view of that situation, the objecting heirs, now respondents, advised ex-commissioner Porrata that the compromise contract with attached inventory had been "placed in a notary's protocol, in conformity with the provisions of paragraph (p), 3rd clause, of the aforesaid contract" (R. 604 bot., 605). Paragraph (b), 3rd clause of the compromise agreement, empowered any of the parties thereto to protocolize or incorporate the compromise agreement into a notarial instrument "for all proper purposes" (R. 546 mid.). This was done (R. 524, bot.-558) after failure by Porrata to comply with his said undertaking.

The ex-executor Mercado and the testamentary ex-partitioner Porrata, not only failed to discharge their contractual duties, *but even allowed their respective*

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[56] Even where agency is created for a fixed period, its expiration ends the agency, though purpose not accomplished (*2 C. J. S.*, p. 1151, Sec. 71; *Smith v. Collins*, 165 Fed. 148 [sale after time limit unauthorized]; *Rundle v. Cutting*, 18 Colo. 337, 32 P. 994 [action after time limit, invalid]; see Sections 1605 and 1610, *Civil Code of P. R.*, ed. 1930; *11 Manresa, Comentarios al Código Civil* [1905], pp. 453, 454).

terms of office to expire upon September, 1939. So, the local Supreme Court declared that the obligations imposed on the then (1938) executor through the compromise contract:

> "were so conferred one year before the expiration of his term, and the short and precise terms therein fixed do not imply at all the extension of such term, but, on the contrary, that the hereditary estate should be delivered to the heirs. They apportioned among themselves the hereditary estate (subdivision [f] of the compromise contract) and the commissioner of partition, bearing this in mind, and, moreover, the fact that the heirs had 'agreed regarding the form and terms of the partition or distribution of the estate' (subdivision [1], compromise contract), likewise consented to said contract. Neither the executor nor the commissioner complied, either within the terms fixed or subsequently, with the terms of the contract • • •
>
> "If the heirs in the case at bar had already accepted the inheritance and agreed upon its distribution, pursuant to the compromise contract of September 9, 1938, the fact that the executor and the commissioner of partition had failed to perform its terms should not be ground for claiming, several years afterwards, that the heirs are not in agreement as to the way in which they should distribute the estate among themselves • • •" (R. 116, 119 mid.).

And as shown before, a voluntary distribution of the estate among the heirs, particularly if assented to by the then (1938) partitioner (R. 103, 116 top) and, specially if the partitionership was allowed to expire (R. 115), rendered entirely unnecessary any further action by the ex-commissioner (*see footnote 29*).

Additional information concerning the so-called draft of partition by ex-commissioner Porrata and the objections thereto, may be seen at pages 35-39 of this brief.

E. *Adjudication of residuary estate by heirs, precludes any partitioner's further intervention under local law.*

Petitioners' brief (p. 52) intimates that delivery of the estate should not have occurred without "a distribution of the residuary estate among the heirs" by a partition deed. Respondents fail to perceive the relevancy of this position. But if petitioners mean to convey the idea that, until a division of the estate is effected in kind, the co-heirs do not become decedent's successors in title, they are wrong.

The Mercado heirs in their compromise agreement of September 9, 1938, adjudicated or distributed the estate of decedent among themselves, share and share alike (R. 102, 116, 119 mid., 542 mid.), with the express acquiescence of both petitioners. This, they could legally do (and no objection to the contrary has been raised) because, as prescribed by *Sections 603 and 610* of the local Civil Code, 1930 ed., "the rights to the succession of a person are transmitted from the moment of his death," and "heirs succeed the deceased in all his rights and obligations by the mere fact of his death." The question, being one peculiarly concerning the applicability of the insular Civil Code, the Supreme Court of Puerto Rico construed and accepted such adjudication among the heirs as legal, unobjectionable and perfectly correct (R. 116, 119 mid.). A leading Spanish civil authority, *6 Sanchez Román* (Vol. 3), pp. 1984, 1985 mid., holds that such adjudication by and between heirs, if assented to by them, is perfectly legal. Besides, in the extemporaneous and illegal draft of partition by ex-commissioner Porrata, timely objected to on divers grounds (*ante*, pp. 37-39), *he suggested that the properties of decedent's estate be adjudicated and awarded without any partition in kind, i.e, proindiviso* (which the heirs had already done; R. 542 [f], 102, 119) "in conformity

(as stated in said draft of partition) with what is set forth in clause 3, letter F, of the Contract of Compromise of the 9th of September, 1938" (R. 757 top). And in Puerto Rico, the *mere agreement* between heirs as to the partition of the hereditary estate, is sufficient for the heirs to be immediately placed in possession thereof, *a fortiori* when, as here, the executorship and partitionship had then expired (R. 112-114, 115).[57]

F. *The doctrine of estoppel cannot be invoked by petitioners.*

Furthermore, the ex-executor himself, petitioner here, has relinquished custody of the estate, and has himself purchased from his co-heirs part of the hereditary properties (see Sub-Appendix A-I).

Reference to the doctrine of *estoppel* appears in petitioners' brief (p. 71 bot.), where §463 of the Puerto Rico Code of Civil Procedure is quoted. This section provides that "whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he cannot in any litigation arising out of such declaration, act, or omission, be permitted to falsify it." But as the points regarding the executorship and judicial administration concern petitioner Mario Mercado Riera, the first objection to that would be that nowhere in Mercado's answer for the delivery of the properties (R. 363-364) nor in his intervention in certiorari No. 1517 before the insular Supreme Court (R. 17-18), was there any defense or question raised as to "estoppel." None, therefore, can be considered on ap-

[57] See Section 604 *P. R. Code of Civil Procedure*, ed. 1933; *Pellicia v. Court*, 36 P. R. R. 588 (termination of executorship); *Ex parte Sotomayor*, 24 P. R. R. 172 (partitionship unnecessary); *Irizarry v. Registrar*, 22 P. R. R. 88 (to same effect); *Galindo y Escosura, Legislación Hipotecaria*, Vol. II pp. 257, 258 (to same effect).

pellate review. *Baetjer v. U. S.*, 143 F. 2d 392, 397; *Mauro v. Rodríguez*, 135 F. 2d 555, col. 1 mid.; *Supreme Forest, etc., v. City of Belton*, 100 F. 2d 655; *Helvering v. Tex. Penn. Oil Co.*, 81 L. ed. 755, 766, col. 2 mid.; *Helvering v. Minn. Tea Co.*, 80 L. ed. 284.

The independent nature and purpose, legal source, separate pleadings, conduct, hearings and judgment of the proceeding for the surrender of the estate to the heirs or co-owners, which gave rise to Certiorari No. 1517, have been fully set out in this brief, pages 12-22. And, of course, the clerk's filing number, as part of the title or caption in the petition, whose object simply is to permit identification, has no bearing on the separate character of such special proceeding, which is determined solely from the facts stated in the complaint or petition (see 49 C. J. 130; *The Juncos, etc., Co. v. Rodríguez*, 16 P. R. R. 286, 292 *Rodríguez v. The Sun Juan Fruit Co.*, 60 D. P. R. 437, Spanish edition).

Besides, written demand upon the ex-executor Mario Mercado Riera was repeated on September 18, 1941, where the attorney in fact for co-heirs, who are now respondents, stated: "I regret *to reiterate* the demand of my principals that you deliver to them the properties, community properties, rights and securities in the estate which belong to them and which are still, without any justification whatsoever, in your custody" (R. 588 mid.). That shows, of course, that fruitless repeated demands had preceded with the same end in view. Again, on October 25, 1941, respondents insisted as follows: "We wish to *reiterate* our many objections to your self-characterization as executor of the properties left by don Mario Mercado Montalvo, especially when you have had plenty of time to put the heirs in possession of said properties" (R. 561 mid.). Then, the ex-executor, in his answer to the petition for the de-

livery of the estate to the coparceners or hereditary co-owners, as filed by him in the Ponce District Court, expressly stated that "with respect to a delivery of the properties of the estate by the executor herein appearing, to the co-heirs, including himself as one of said co-heirs, he has always been willing and ready to do it * * *," (R. 363 mid., 105 mid.).

Furthermore, *Sections 832 and 833* of the insular Civil Code, ed. 1930, expressly declare that the executorship terminates by the lapse of the term fixed by the testator or by law and that, thereupon, the further execution of the will shall devolve upon the heirs. As held by the local Supreme Court (R. 114 mid., 120), upon the expiration of the term, the testamentary executorship terminates by *force of law* or *ipso jure*; without the necessity of any judgment nor any special order, and, thereupon, the execution of the will of the testator pertains to the heirs; and if the executor refuses to consider his commission at an end, or to deliver the properties, if any, or to render accounts, *he "may be compelled to do so by judicial means."*

It will be readily observed that the obligation to return the estate to the heirs, upon the termination of the executorship, was a duty which cannot here be easily shunned by the belated expedient (a mere afterthought) of invoking the theory of estoppel, manifestly inapplicable here. Such theory was, in consequence, repudiated by both lower Appellate Courts (R. 104, 105, 116, 119, 120, 929, 930 mid.; 152 F. 2d 86, 96).

VI.

As a matter of local law, (A) the insular Supreme Court correctly and reasonably held that the executorship expired on September 1, 1939; and that (B) no judicial administration of decedent's estate had been sought or decreed (Petitioners' brief, Point IV, pp. 62-76).

A. *The executorship legally expired on September 1, 1939.*

On this point, the insular Supreme Court, on July 14, 1943, rendered its able and painstaking opinion in Certiorari No. 1517 (R. 97-121). Among other things, the local Supreme Court states that decedent, Mario Mercado Montalvo, died on August 22, 1937, leaving a holographic will in which he named as his sole and universal heirs his four children, all of them of legal age, María-Luisa, Margarita, Adrián and Mario Mercado Riera, designating the latter as testamentary executor and "extending to him the statutory term of one year for whatever time might be necessary to perform his office" (R. 99 mid.).

After reciting the compromise agreement entered into by and between the co-heirs (R. 100-104), the territorial Supreme Court below held that the fundamental question "which is the gist of the whole controversy" is whether or not the executorship terminated by virtue of the expiration of the period which the testator or the law allowed the executor or whether the heirs, by their acts in accordance with the compromise contract, could extend said period (R. 110 top).

The local Civil Code, ed. 1930, substantially provides that the executor for whom testator has not fixed a term

must fulfill his duties within a year, counted from his acceptance (*Section 826*) that if testator desires to extend the legal term, he must *expressly* fix the time of the extension, otherwise it shall be understood that the term *is extended for one year* (*Section 827*); that the *heirs and legatees* may, *by common consent,* extend the term of the executorship for the time they may consider necessary, but if the agreement is only that of a majority, *the extension cannot exceed one year* (*Section 828*); that an executorship terminates, among other causes, by lapse of the term fixed by the testator, by law, and, in a proper case, by the persons interested (*Section 832*) *and that in the cases of the foregoing Section 832, the execution of the will of testator shall devolve upon the heirs* (*Section 833*).

It should be noted, in passing, that in the execution of the compromise agreement by and between the co-heirs, none of the legatees was a party (R. 527, 547). This means that, in absence of any of the legatees, there could be no unanimity for an imaginary extension, which, even if the co-heirs had not fixed shorter periods, could never exceed a year to expire also on September 1, 1939 (see *Alvarado v. Sucn Ortiz, et al.,* 15 D. P. R. 137; R. 112 mid.; 930 bot.).

Upon a careful consideration of the foregoing provisions of the Puerto Rico Civil Code and of Spanish Supreme Court decisions and opinions of noted law writers and commentators thereon,[58] the Puerto Rico Supreme Court, passing judgment upon those questions of purely local law and concern, held, insofar as now pertinent, as follows:

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[58] Such as Judgment of the Supreme Court of Spain of November 24, 1906, *105 Jurisprudencia Civil,* 812, 819; *Sánchez Román, Derecho Civil,* Vol. II, p. 1450; *6 Manresa, Comentarios al Código Civil* (1932), 736; *4 Maura, Dictámenes* (Legal Opinions) 308, 309 and 351; *6 Manresa, Comentarios al Código Civil* (1932, pp. 753, 238, 239; *96 Jurisprudencia Civil,* pp. 599, 601, 602—see Record, pp. 110-115.

"We decide, therefore, that as Mario Mercado Riera was granted his letters testamentary as executor on September 1, 1937, the term of one year allowed him by Section 826, *supra,* expired on September 1, 1938, and that the additional year granted him by the testator under Section 827, *supra,* expired on September 1, 1939, when the executorship terminated pursuant to Section 832 of the Civil Code which provides that 'executorship terminates by the death, incapacity, renunciation, or removal of the executor, *and by the lapse of the term fixed by the testator, by law, and, in a proper case, by the persons interested'* (italics ours), inasmuch as there is nothing in the record to which application may be made of Section 828 of the same statute which provides that 'the heirs and legatees may, by common consent, extend the term of the executorship for the time they may consider necessary, but if the agreement is only that of a majority, the extension cannot exceed one year' (R. 112 mid.).

"The lower court, therefore, erred in holding that the expiration of the term of two years provided in the Civil Code for a case like the one at bar 'does not terminate the executorship' • • • (R. 112 bot.).

"• • • we cannot disregard the provisions of Section 828 of the Civil Code, and, *as the legatees have not intervened in any way in said compromise contract, the latter cannot, by judicial construction, operate as extending the term of the executor.* On the contrary, *if we pay attention to the short and precise terms fixed by the heirs* so that the executor could perform his duties as such, *it cannot be construed as an indefinite extension,* as claimed by the executor. Moreover, *at the time of the execution of said compromise contract, September 9, 1938, the executor still had one year for the fulfillment of his office,* which did not expire until September 1, 1939. *We cannot logically construe the contract as an indefinite and indeterminate extension of the executorship* (R. 113 top; 930-931; 152 F. 2d 96, col. 2).

"* * * as no agreement whatever has been shown between the heirs *and the legatees,* and, as the heirs did not constitute a majority, such conduct cannot either be construed as amounting to the granting of any of the extensions provided for in Section 828, *supra* * * * (R. 113 mid.).

"* * * In his commentaries on Section 910 (equivalent to Section 832 of P. R. Civil Code, ed. 1930) and the judgment of October 6, 1897, *supra,* Manresa says:

> "'Upon the expiration of the term fixed by the testator or by law, in a proper case, the extension granted by the testator himself, by the heirs and legatees, or by judicial authority, terminates *ipso jure* the executorship, *even though he may not have terminated his commission.' 6 Manresa, Comentarios al Código Civil* (1932), 753.

"On pages 238 and 239, he says:

> "'Upon the expiration of the term and the extension or extensions, in a proper case, the testamentary executorship terminates by force of law, without the necessity of any judgment or any special order, as set forth in Section 910, and the execution of the will of the testator devolves upon the heirs, according to Section 911.'
>
> "'If the executor refuses to consider his commission as terminated at the expiration of the term or to deliver the properties, if any, or to render accounts, *he may be compelled to do so by judicial means.'* (Italics ours.) (R. 114.)

"Nor can it be maintained that the term of the commissioner (Record contains 'executor' because of clerical mistake in translation) is still in force and that the partition should be made in accordance with the draft of partition prepared by him. As we have stated, the commissioner (Record contains 'executor' because of clerical mistake) in the present case was granted by the lower court an extension until September 6, 1939, to fulfill his

office. *He has neither sought, nor has he been granted, any additional term.* Under such circumstances, it has been held by the Division of the Registries that (quotation from 96 Jurisprudencia Civil, pp. 599, 601, 602, follows) (R. 114 bot., 115).

"* * * Assuming that, upon the expiration of his term as executor, Mario Mercado Riera continued as agent of the other co-heirs, it is clear that his principals could terminate the agency at any time (Section 1624 of the Civil Code), and that under Section 1611 'every agent is bound to give an account of his transactions and to pay to the principal all that he may have received by virtue of the agency, even though what has been received is not owed to the principal' (R. 115 bot.).

"We say again that the powers conferred on the executor by the compromise contract *were so conferred one year before the expiration of his term* and that *the short and precise terms therein fixed do not imply at all the extension of such term* but, on the contrary, that the hereditary estate should be delivered to the heirs. They apportioned among themselves the hereditary estate (subdivision [f] of the compromise contract) and the commissioner of partition, bearing this in mind, and, moreover, the fact that the heirs had 'agreed regarding the form and the terms of the partition or distribution of the estate' (subdivision [1], compromise contract), likewise consented to said contract. *Neither the executor nor the commissioner complied, either within the terms fixed or subsequently, with the terms of the contract.* To hold that compelling the ex-executor to deliver the estate 'would amount to leave the performance of the compromise contract to the will of one of the parties,' as did the lower court is not justified by the facts of the case. On the contrary, it may well be maintained that upon the expiration of the executorship and of the terms fixed by the compromise contract, neither of the heirs shall be given possession of the whole hereditary estate, inasmuch as the execution of the will of the

testator devolves, under the law, upon all the heirs (R. 116). (Italics ours.)

"Neither within the proceeding regarding letters testamentary nor within the beneficiary acceptance proceeding did the estate of Mario Mercado Montalvo ever become a judicial administration, and, as the executorship had expired, it devolves upon the heirs to execute the will of the testator regarding any particular where the executor has failed to act" (R. 120 mid.).

Upon finding no error, the Court of Appeals affirmed the judgments of the Puerto Rico Supreme Court, whose conclusion was held to be *"patently correct"* (R. 930 mid., 931; 152 F. 2d 86, 96, col. 2).

Petitioner Porrata has further admitted that, according to "jurisprudence" construing local law, the partitioner was subject to the provisions of the local Civil Code granting an executor a period of one year from date of acceptance to discharge his duties and to close the executorship (R. 568 bot.); and in pursuance of such rule, Porrata himself sought and obtained an extension to comply with his duties as commissioner and to deliver "the definite partition of the estate to the parties entitled to it" until the 6th day of September, 1939 (R. 568 bot., 569, 571 mid.). But he failed to seek and obtain further extensions as the insular Supreme Court below correctly found (R. 100 top, 916, par. 2).

Appellants also, in their Statement on Appeal below, p. 32 (see footnote, *ante*, p. 64), concede that there appears to be "substantial civil law authority in the decisions of the Supreme Court of Spain and in the works of the commentators on the Spanish Civil Code, for holding, as the insular Supreme Court does, that the executor's term of office actually expired on September 2, 1939, two years after he first took office, despite the testator's express direction in the will that the one-year

term granted him by Section 826 of the Civil Code for executing his office shall be extended for all the time that may be necessary."

B. *No judicial administration of decedent's estate had ever been sought or decreed. None can arise in Puerto Rico by estoppel or implication.*

As to this additional aspect of local law and practice, the Island's Supreme Court, after fully considering the matter (R. 104-105 top, 116 mid.-120) held thus:

> "Although proceeding No. 1213, regarding beneficiary acceptance, was instituted by Adrián Mercado, *no provision was ever made within said proceeding by the lower court upon petition of any interested party for any judicial administration whatever of the estate* (Section 974 of the Civil Code, 1930 ed.), *nor was any appointment of judicial administrator ever sought or obtained in proceeding No. 782, regarding letters testamentary,* of this hereditary estate which has always been, ever since the death of the testator, in the possession of the coheir Mario Mercado Riera as testamentary executor (R. 104 bot.-105; italics ours).
>
> "Having reached the conclusion that the term of the executorship elapsed by statutory provision in September, 1939, it remains for us to decide whether, as maintained by the lower court, all the incidents in the present case, 'turned the whole controversy between these heirs into testamentary proceeding.' This is the same legal viewpoint adopted by the attorney for the ex-executor in his brief when referring to and commenting on the provisions of the law relating to special legal proceedings, *supra,* and when maintaining that the properties of the estate are under *custodia legis* on the ground that the proceeding for the issuance of letters testamentary turned the whole proceeding into an action *in rem,* as happens in the United States in 'probate proceedings' (R. 116).

"The question is not new and has already been determined by this Court."[39]

"It is true that in *Porrata v. District Court, supra,* we said that 'it may be that the time has come for the legislature to harmonize, by framing a complete statute covering the special field before us, the Spanish and American principles governing this whole and not unimportant phase of the law of decedents' estates.' However, the legislature has failed to do so, and, in the absence of any new statute, *it is our opinion that, in accordance with the facts* in the case at bar, it cannot be maintained that the substantive provisions of our Civil Code regarding the appointment, duties and terms of a testamentary executor may be considered as altered or modified as to their scope as substantive law by the procedural provisions of the law relating to special legal proceedings. NEITHER WITHIN THE PROCEEDING REGARDING LETTERS TESTAMENTARY NOR WITHIN THE BENEFICIARY ACCEPTANCE PROCEEDING DID THE ESTATE OF MARIO MERCADO EVER BECOME A JUDICIAL ADMINISTRATION, AND, AS THE EXECUTORSHIP HAD EXPIRED, IT DEVOLVES UPON THE HEIRS TO EXECUTE THE WILL OF THE TESTATOR REGARD-

[39] The Supreme Court then proceeds to cite: *Aponte & Sobrino v. Heirs of Perez*, 48 P. R. R. 437, 441-442 (*But that does not mean that because an executor has been appointed, the property of the estate is under judicial administration. The executor spoken of in our civil law is not in the same position generally prevailing in the American legal system.* Here, as there, the executor derives his authority from the will of the testator, from the testament which names him; but with us, when the testator does not especially determine his powers, these are limited by Section 824 of the Civil Code: R. 117); *Perez v. Succrs. of M. Perez & Co.*, 41 P. R. R. 844, 845 (Administrators and executors in the United States fully represent the deceased. In Puerto Rico the principle of universal succession in a modified form applies and the heirs represent the decedent from the moment of the death and are entitled to all the property); *Ex p. Suau*, 27 P. R. R. 890, 891 (If executor wishes to exercise authority not conferred by will, he should bring himself within scope of a judicial administrator by taking the steps required by law); *Heirs of Pellicia v. District Court*, 36 P. R. R. 588, 590 (executorship, unless otherwise provided by will, answers only a provisional and transitory situation pending acceptance of inheritance by heirs and their agreement as to division thereof); *Crehore v. Registrar*, 22 P. R. R. 30-33 (the executor is not the administrator of the estate, for unless the testator has conferred that character upon him he has no other powers than those specified in Sections 823 and 824 of the Civil Code—1930 ed.).

ING ANY PARTICULAR WHERE THE EXECUTOR HAS FAILED TO ACT (R. 119, bot.-120; emphasis supplied).

> "In our judgment, the lower court *exceeded its jurisdiction* when holding that the hereditary estate was under *custodia legis,* without any judicial administration having been decreed" • • • (R. 120).

Petitioner Porrata has conceded on this record that the executor *had "not requested a judicial administration* of the estate and that *none of the parties* interested in the executorship of the testator *have asked judicial intervention"* and that "the testamentary executor only has the powers enumerated in articles 824 and 825 of the Civil Code" (R. 214; *ante* p. 47).

The record also shows that, as petitioner Porrata has admitted, the testator "in the interest of economy, provided in his testament everything that is necessary for an *extrajudicial* liquidation of the same; a proceeding which always is beneficial to the heirs, legatees and creditors of an estate" (R. 799, par. 5).

In petitioners' brief, p. 62, reference is made to Section 25 of the Law of Special Legal Proceedings (Section 558, Code of Civil Procedure, ed. 1933). It is there provided that when all or one or more of the heirs are absent *or have no legal representative* in the jurisdiction of the last place of residence of the decedent, or where the property is located, the judicial administration of the property of the testator shall be necessary. Respondents fail to see the relevancy of this citation. First, because no point under the cited provision was raised in the local Supreme Court, and hence, it could not now be urged on appellate review (*Baetjer v. U. S. (P. R.),* 143 F. 2d 392, 397, and other cases in footnote 41, *ante,* p. 51). Secondly, because said Section 558 of the local Code of Civil Procedure (Sec. 25, Law of Special Legal Proceedings), refers to cases

where all or some of the heirs are absent *and have no agent or representative at decedent's domicile* or at the place where his property is located (Spanish text, which prevails, reads: "cuando todos o algunos de los herederos están ausentes *y no tengan representante legítimo* en la jurisdicción del último domicilio"). That, as its phraseology indicates, refers to a continued absence, but coheir Adrián Mercado, to whom petitioners allude, "returned to Puerto Rico, via United States, on the 22nd day of November, 1937" (R. 779, near bot.), without any judicial administration having been sought or decreed up to that time nor afterwards (R. 104, bot.-105). And thirdly, because even if the point had been raised below, it could have been shown that appellee Adrián Mercado, before and after decedent's death, had an attorney in fact (representante legítimo) representing him during his temporary (R. 499, line 9) absence from the Island.

Moreover, *a judicial administration* for a hereditary estate in Puerto Rico, under Sections 23 or 25 of the Law of Special Legal Proceedings (Sections 556 and 558, Code of Civil Procedure, ed. 1933), *can never arise by estoppel or implication, but it must be applied for through the proper petition, setting out the necessary and jurisdictional facts, and it must always be judicially decreed.*

That has been the settled rule in Puerto Rico for about forty years. See *Dexter v. District Judge* (1907), 13 P. R. R. 340 (under Section 25 of the Special Legal Proceeding Act, a sworn affidavit is required stating the necessary circumstances and petitioner must show his capacity to apply for the judicial administration); *Vicens, et al., v. Cruz (1914)*, 20 P. R. R. 179, 181 top (proceeding for judicial administration commences by filing petition to that effect; petition for appointment of a guardian ad litem does not initiate judicial administration); *Sabater v. Escudero* (1916), 23 P. R. R. 794, 798, par. 3 (pe-

tition for judicial administration must "set forth the particulars necessary to the end sought" and "personal right of petitioner should be established clearly"); *Ex parte Sotomayor,* 24 P. R. R. 173, 183 (under Section 25 of the Law of Special Legal Proceedings, even when there are minors, judicial administration is *decreed* only when they are not represented by their parents or guardian); *Ex parte Suau,* 27 P. R. R. 890, 891 (executor who wishes to exercise authority not conferred by will, should bring himself within the scope of a judicial administrator, *by taking the steps required by law*); *Ex parte Vega,* 28 P. R. R. 361, 363-364 (petitioner for a judicial administration "must show a clear right in himself and produce evidence in support of his allegations"; a proper petition should be filed duly showing the necessary facts, as required by the statute); *Succ'n de Jesús v. Corte,* 65 D. P. R. (Spanish), p. 3 (Section 556, P. R. Code of Civil Procedure provides also that the petition must state under oath "the interest and right of action" of applicant).

The foregoing plainly demonstrates that in Puerto Rico, under the special provisions relating to a judicial administration of a hereditary estate and local decisional authority thereunder, an *implied* judicial administration or one by estoppel, is a most fanciful conception.

The several proceedings that have occurred in connection with decedent's estate, have already been shown to be of an independent character, with different aims, each arising from different legal sources and having separate pleadings, hearings and judgments (see *ante,* 29-39).

As well pointed out by the Supreme Court of Puerto Rico (R. 104, bot.-105, 120; see also *7 Manresa, Comentarios al Código Civil,* 3ra. edición, pp. 480, 489), in none of those divers and distinct proceedings was there a judicial administration ever sought or decreed; not even within proceeding No. 1213 for beneficiary acceptance,

under Sections 974 and 980 of the Civil Code, nor in No. 782 regarding letters testamentary, as it should have been done in order to bring the estate within a costly and drastic judicial administration of *custodia legis.*

In its affirmatory judgment, the Court of Appeals concludes: "* * * the court below held that a petition under §556 of the Code of Civil Procedure, *supra,* was a *sine qua non* of judicial administration * * * In other words it held that under Puerto Rican law judicial administration cannot arise by implication or estoppel but only by petition in accordance with §556. Certainly we are not prepared to say that this conclusion is 'patently erroneous.' *On the other hand it would seem to be patently correct"* (R. 930 mid.; 152 F. 2d 96; italics supplied).

C. *The decision of the insular Supreme Court, affirmed by the Court of Appeals, even if reviewable here, should not be disturbed as it wholly deals with local law.*

A perusal of the Supreme Court's conclusions shows that they are reasonable, logical and in absolute harmony with the wording of insular statutes concerning executorships, partitionships and judicial administrators, and also in perfect accord with existing local jurisprudence.

Upon questions so peculiarly local, the federal courts and those of other jurisdictions owe great deference to what the Court concerned has done. It would be a strong thing for another tribunal to say that the insular Supreme Court did not know its own business under the local succession laws.

This highest National Court has stated many times the respect due to the understanding of insular courts upon matters of purely local concern; and also that federal appellate jurisdiction "is not given for the purpose of remodeling the Spanish-American law according to common law conceptions." *Díaz v. González y Lugo (P. R.),* 67 L. ed. 550, 552.

For "over sixty years" the Federal Supreme Court "has consistently recognized the deference due interpretations of local law" by teritorial courts. *Bonet v. Texas Co. (P. R.)*, 84 L. ed. 405.

Manifestly "the solution of the controversy must turn upon the meaning and effect of the above quoted sections of the Civil Code—the local law of Porto Rico" and considering and recognizing the high regard due to the understanding of local courts upon matters of purely local concern, the Federal Supreme Court accepted as correct the views of the insular Supreme Court. *Matos v. Hermanos (P. R.)*, 81 L. ed. 728, 730.

The Puerto Rico Supreme Court has stated that, in the absence of any new statute, it is its "opinion that, in accordance with the facts in the case at bar, it cannot be maintained that the substantive provisions of our Civil Code regarding the appointment, duties and terms of a testamentary executor may be considered as altered or modified as to their scope as substantive law by the procedural provisions of the law relating to special legal proceedings" (R. 120 top). And decisions by the Supreme Court of the Island regarding the construction of territorial statutes, in case of their possible conflict, *"are to be accorded the greatest weight" (P. R. v. Rubert Hermanos,* 86 L. ed. 1081, 1088, col. 2 mid.).

> "Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island." *Bonet v. Yabucoa Sugar Co.*, 83 L. ed. 949, 306 U. S. 510; *Bonet v. Texas Co. (P. R.) Inc.*, 84 L. ed. 405, 308 U. S. 431.

This Court has recently had occasion to again refer to the deference due to "the understandings of matters of

local law expressed in the pronouncements of the insular courts." *De Castro v. Board of Comm.*, 88 L. ed. 1385, 1392; *Hijos v. Commins*, 88 L. ed. 1396, 1399.

CONCLUSION.

For the reasons set forth in respondents' motion for dismissal (Appendix A), and for the further reasons above stated, it is respectfully submitted that the petition for certiorari should be dismissed or denied.

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